

**Before the Additional Chief Secretary to Government of Haryana
Industries & Commerce Department**

Chamber of Industries of Udyog Vihar, Gurgaon

- Petitioner

Versus

State of Haryana & others

- Respondents

Subject: CWP No. 10579 of 2011 - Order dated 27.09.2013 passed by the Hon'ble Punjab & Haryana High Court in the matter of Chamber of Industries of Udyog Vihar, Gurgaon v/s State of Haryana & others - Matter pertaining to EMP-2011.

Order

1. The Chamber of Industries, Udyog Vihar, Gurgaon, filed CWP No. 10579 of 2011 which was disposed of by the Hon'ble Punjab & Haryana High Court vide its orders dated 27.09.2013. The operative order dated 27.09.2013 is reproduced as under:

“During the course of arguments, both the parties have agreed that this writ petition be disposed of with liberty to the petitioner to file a detailed representation with regard to the issue involved in this writ petition before the respondent No.1.

If any such representation is made within one month from the receipt of the certified copy of this order, the respondent No.1-Principal Secretary-cum Financial Commissioner to Govt. of Industrial Department is directed to decide the said representation by passing a speaking order in accordance with law within a period of four months.

Disposed of in the aforesaid terms.

(Satish Kumar Mittal)
Judge

(Mahavir S. Chauhan)
Judge

27.09.2013”

2. Pursuant to the directions of the Hon'ble High Court vide its orders ibid, the petitioner Chamber of Industries submitted its representation dated 30th October 2013 (received on 05.11.2013) through Sh. H. R. Vaish, the President of the Chamber. It was decided to grant them an opportunity of hearing which was held on 18.03.2014. The hearing was attended by the following representatives from the Chamber:

Sr. No.	Name of the Person	Designation as on the Letter-head of the Chamber	Designation as mentioned in the Attendance Sheet during hearing	Industrial Plot No.
1	Sh. B. B. Sharma	General Secretary	Member	701, Phase V, Udhog Vihar
2	Sh. J. L. Sehgal	Executive Member	Member	45, Sector 18
3	Sh. S. S. Verma	Not Mentioned	Member	Not Mentioned
4	Sh. Ashok Kohli	Not Mentioned	Member	Not Mentioned
5	Col. Raj Singla	Not Mentioned	President	Not Mentioned
6	Sh. S. K. Gupta	Executive Member	-	82-A, Udhog Vihar, Phase IVIV
7	Sh. Mohit Dhamija	Executive Member	Member	274, U.V. Phase IV

3. The petitioner Chamber of Industries is statedly a Society registered under the Societies Registration Act, 1860, with about 400 members, and of which a list of 361 members is enclosed at Annexure P/1 to the petition. The gist of membership of the petitioner Chamber of Industries, as culled out from Annexure P/1, is as under:

Sr. No.	Area/ Phase	No. of Members of the Petitioner Chamber of Industries	Total No. of Allottees	As % of the Total number of Allottees
(i)	Industrial Estate, Sector 18, Gurgaon	11	84	13.09%
(ii)	Phase-I, Udhog Vihar, Gurgaon	63	271	23.24%
(iii)	Phase-II, Udhog Vihar, Gurgaon	29	118	24.58%
(iv)	Phase-III, Udhog Vihar, Gurgaon	14	116	12.07%
(v)	Phase-IV, Udhog Vihar, Gurgaon	117	361	32.41%
(vi)	Phase-V, Udhog Vihar, Gurgaon	121	524	23.09%
(vii)	Electronic City (This is not an HSIIDC area)	06	0	N.A.
	Total	361	1474	24.49%

4. The petitioner-Chamber filed the CWP before the Hon'ble High Court and subsequently submitted the representation in a representative capacity. It is brought out from **Table-2** above that the petitioner-Chamber represents only 24.49% of the total number of allottees of the Udhyog Vihar (Phase-I to V & I.E. Gurgaon) Complex in Gurgaon, which was developed and is being maintained by the HSIIDC. It is left to the understanding of any person if a group comprising of less than 25% of the total number of allottees can rightfully claim to be representing the views/ opinions of all the allottees of Udhyog Vihar, Gurgaon.

5. The petitioner-Chamber has laid challenge to various provisions of the Estate Management Procedures-2011 or the earlier versions of EMPs containing the terms and conditions of allotment by the HSIIDC and have questioned the legality thereof with reference to the provisions of the Contract Act, and the Transfer of Property Act, read with the Constitution of India. They have prayed for quashing of certain provisions of the Estate Management Procedures-2011 (hereinafter called EMP-2011), notified by Haryana State Industrial & Infrastructure Development Corporation Ltd. (hereinafter called HSIIDC) for regulation & management of the industrial estates developed by the HSIIDC.

6. While disposing of the aforesaid writ petition, the Hon'ble High Court directed the petitioners vide order dated 27.09.2013 to file a detailed representation and directed the undersigned to decide the same by passing a speaking order in accordance with law. I have gone through the representation submitted by the petitioner-Chamber, considered the submissions made and arguments advanced during the personal hearing, the EMP-2011, the previous EMPs, considered the submissions made on behalf of the HSIIDC, provisions of the referred Statutes and various judgements delivered by the Hon'ble Supreme Court and the Hon'ble High Court as relevant to the facts of this case. It is admitted that there has been a delay in passing this order, which is on account of various factors, however, the same is regretted.

7. Before one deals with each of the 14 issues raised by the petitioners in their representation, it is important to give a brief background of the industrial scenario in the state. The same is given in the following sub-paras:

(i) Industrial Sector plays an important role in the economic growth of the country-nee-state, be it as a technology driver, a generator of employment opportunities, source of revenue, exports etc. Before its creation as a separate state in the year 1966, Haryana had some industrial clusters in the form of Metal Industry of Jagadhari and Rewari, the Handloom Industry of Panipat and the Scientific Goods industry of Ambala. The joint Punjab government took an initiative to develop Faridabad as an Industrial Town, which saw the

establishment of engineering goods industry in the state. However, excepting a few large industrial units like the BST at Gannaur, the HMT Complex at Pinjore-Kalka, the Good Year at Faridabad, Hindustan Glass and Somany Tiles at Bahadurgarh etc. where the Government of the day stepped in to acquire land for a few large industrial units, most of the industry was established over land purchased by the entrepreneurs of their own. The Directorate of Industries undertook the development of a few small Industrial Estates at places like Yamunanagar, Panipat, Sonapat and Bahadurgarh. The Government's perception of development of an Industrial Estate was limited to acquisition of land, carving out plots and provision of some bare-bone infrastructure facilities.

- (ii) With the incorporation of HSIIDC in the year 1967, it started with the development of Industrial infrastructure on a small scale with the development of some planned industrial estates, starting with small industrial estates at Murthal, Yamunanagar, Panchkula, and Ambala. It was in the mid 1970s that it took up the development of an Industrial Estate at Gurgaon, followed by phased development of what is today known as Udhyog Vihar, Gurgaon.
- (iii) The Haryana Urban Development Authority (HUDA) has also developed Industrial Estates at different locations in the state, especially in Murthal, Faridabad, Gurgaon, Dharuhera, Bahadurgarh, Panchkula and a few other places.
- (iv) With the increased focus on development of the Secondary Sector, mainly the manufacturing Sector, and level of expectations of the industry, the State Government decided to designate the HSIIDC as the nodal agency for development of Industrial infrastructure in the state in 1996, as HUDA concentrated primarily on development of town level infrastructure facilities and residential, institutional, commercial sectors. The HSIIDC has acquired a land bank of more than 28,000 acres by now, of which about 20,000 acres already stands developed in the form of Industrial Model Townships, Industrial Parks and Estates (details contained in the EMP-2011 which is available on the HSIIDC website in public domain) and the development works are under way in the recently acquired remaining land bank. Apart from the Government effort, it has been observed that some private initiatives have also been granted licenses for development of Industrial Colonies.
- (v) Notwithstanding the above, it has been revealed from a recent survey of about 69,233 manufacturing industrial units in the state that only about 30 to 35% of the Industrial Units are located within the planned Industrial Estates

developed by HUDA and HSIIDC and the remaining 65% of the industrial units are located over land purchased by them outside these planned industrial areas. These clusters, unplanned as they are, exist in the form of unplanned industrial clusters/ establishments. With the promulgation of the new Land Acquisition Act of 2013, it is doubtful if the State agencies would be able to acquire any more land and the industry may have to fend for itself qua their land requirements.

8. Given the above background, it is also contextual to briefly describe the evolution of process of land development, its allotment, regulation and operation and management of the facilities created in these estates over a period of time. The same is given in the following sub-paras:
 - (i) The planned development of any area assumes provision of a number of infrastructure facilities (e.g. roads, water supply, sewage and drainage, electrical transmission and distribution system, street lights, etc. constituting the basic internal infrastructure) and the supporting infrastructure in terms of Common Effluent Treatment Plants (CETPs) communication facilities, ESI hospital/Dispensary, Fire Stations, neighbourhood shopping, offices of Banks & Financial Institutions, and industrial labour housing.
 - (ii) As per the Planning Regulations, not more than 65% of the gross area can be planned as the plotted area in an industrial estate as the balance 35% area is in any case required for roads and services, open spaces and public utilities like Water Supply Storage Reservoirs and Treatment Plants, Common Effluent Treatment System, Solid Waste Disposal systems, Idle Parking spaces and open greens. In actual practice, the net plotted area in any industrial estate varies between 45% to 60% of the Gross area depending upon local conditions. As a result, the per sq. meter cost of a developed plot works out to no less than 4 to 5 times of the cost of raw land.
 - (iii) It is an established fact that the industrial units located in a planned developed area have a number of inherent advantages in terms of availability of infrastructure facilities and especially in meeting the Audit Standards and requirements for their international technology related tie-ups or procurement organizations.
 - (iv) Given the above features, the land situated in the planned areas appreciates much faster and fetches a premium vis-à-vis the land in unplanned area sans all these facilities. It is a fact that this appreciation of land is much higher and faster after about 40 to 50% of the area swings into industrial production activities in an area. As a result, there is a considerable difference between the

allotment price of HSIIDC and the market price in respect of land/ plots allotted by the HSIIDC in its expansion phases. This process also offers an attraction to people to apply for and seek the allotment of industrial plots with the intent of earning a quick premium through its re-sale in the open market rather than its utilization for industrial production activities. This defeats the very purpose of development of planned industrial areas as the plots therein are meant for giving a boost to industrial production than facilitating and enabling speculative gains through land transfers.

- (v) It has been observed that there are three broad categories of allottees of industrial plots i.e. (a) who use the land for setting up industrial projects, (b) who make investment in plots and construct the sheds/ buildings to lease out to the interested parties and earn returns on their investment through the lease rentals, and (c) who neither set-up an industry nor create some built-up space for new start-ups but earn quick money through sale of unutilised industrial land as a speculative activity.
- (vi) The use of facilities in any planned area has to be regulated in accordance with the laws of land. These regulations are more pronounced in the form of Zoning Regulations and the building byelaws. An area like Udhyog Vihar was originally planned with an F.A.R. of 0.75. Naturally, the Right of Way for the internal circulation roads and other infrastructure facilities was planned to cater to the load generated by the F.A.R. intensity at that time with the permissible F.A.R of 0.75. As the price of land started going up in this area, the allottees started making representations for increasing the F.A. R.
- (vii) One cannot be oblivious of the fact that in a democratic set-up like ours, various pressure groups get created from time to time who exercise their own space in the decision-making process which may necessarily not be justified at times. Industry people certainly constitute one such important pressure group. It was on consistent demands of this group that the Government agreed to increase the F.A.R. for general industry from 0.75 to 1.25 a few years back. Naturally, this required augmentation of the infrastructure facilities/ capacity. While the capacity of Water supply lines and sewage systems could be augmented, there was no way to increase the RoW of the internal Circulation Roads.
- (viii) When it comes to compliance of laws and regulations, it has been a pleasant experience to deal with the foreign companies establishing their manufacturing base here. However, it has been an equally disappointing experience with a majority of the indigenous industry people, who show scant regard for the rules and regulations. A quick survey was got conducted in

respect of the members of the petitioner Chamber of Industries to ascertain the status of their plots/ units and the report in this behalf is as follows:

Report on the members of the Chamber of Industries, Gurgaon									
Sr. No.	Phase	Total no. of members	No. of Units running	No. of units lying Closed	Running Units: Self-operated	Running Units - Leased out	No. of units with zoning violations	No. of units with violations of building bye-laws	No. of plots already transferred
1	I	63	55	8	36	19	48	20	14
2	II	29	23	6	12	11	16	11	9
3	III	14	12	2	9	3	10	4	-
4	IV	117	91	26	58	33	79	45	16
5	V	121	93	28	58	35	83	57	43
6	I.E-18	11	8	3	5	3	8	4	-
	Total	355	282 (80%)	73 (20%)	178 (50.4%)	104 (29.4%)	244 (69%)	141 (40%)	82 (23%)

- (ix) A perusal of the above status is self revealing. About 69% of the members of the petitioner-chamber have committed violations of Zoning Regulations (which are non-compoundable). The situation in rest of the Udhog Vihar area is no better. This is in spite of a regulatory framework in place through the Estate Management Procedures.
- (ix) It is in the above background that Estate Management Procedures (EMPs) have been framed from time to time for regulation of the Industrial Estates developed by the HSIIDC as it gained experience over a period of time. These EMPs have always been available in the public domain and are known to the interested people. Evolution of EMPs is an exercise for proper and balanced regulation of these planned industrial areas which remains an evolutionary process. Some of the allottees find a way to frustrate certain provisions of the EMPs and the HSIIDC tries to fill the gaps in the process. For instance, when restrictions were imposed qua transfer of plots without implementation of industrial projects, people found a way out to transfer the plots through transfer of shares in the companies. There are also cases where an unauthorized purchaser gets inducted as a minority share holder and then applies for transfer after one year of operations to meet the conditions. There are a large number of cases even today where the plots have been transferred multiple times on Power of Attorney, the original or the intermediate sellers do not come forward to execute the Conveyance Deeds and the present occupants are operating their units under the PoAs and insisting upon the HSIIDC to execute the Conveyance Deeds directly in their favour.
- (x) The biggest problem is qua the violations of Zoning Regulations and the building bye-laws. The related laws would operate at all times even if the free-

hold character of allotments is assumed to mean that the plots are allotted with absolute rights without any accompanying conditions. The details contained in the table given under sub-para (viii) above are a pointer in this direction. The violations of Zoning Regulations and building bye-laws are much more pronounced in the case of Udhyog Vihar, Gurgaon, understandably because of the unlimited greed on account of the high prices of land. The HSIIDC has always found it extremely difficult to act as an effective regulator in this behalf. The moment the HSIIDC staff issues notices to the allottees, some kind of a canard gets built-up and mounted against them. Perhaps this is the price that we pay for a democratic polity.

EMP-2011

8. The HSIIDC, being the nodal agency of the State Government for development of Industrial infrastructure, was mandated to revise and notify its Estate Management Procedures (EMP), in tandem with the Industrial and Investment Policy-2011. The HSIIDC had been following a certain set of operational guidelines for the management of industrial estates, which were revised in line with the decision of the State Government and circulated as EMP-2011. The provisions of EMP-2011 were made applicable for all the industrial plots allotted on or after 01.01.2011 and **the previous allottees were given the option to either continue to be governed by the terms and conditions of allotment as contained in the agreements executed by them with the HSIIDC at the time of allotment as well as provisions of EMP applicable to such allottees, or switch over to EMP-2011, by submitting an unconditional undertaking to accept and be bound by the provisions of EMP-2011.** Since the EMP-2011 consisted a more liberal approach to a number of issues, the old allottees were not given the liberty to pick and choose. Thus no rights of the allottees, who are being represented by the petitioner Chamber, have been infringed or abrogated in any manner on account of the formulation of EMP-2011. In case the petitioners are not comfortable with the provisions of EMP-2011, they have been given the liberty not to opt for the same and continue to be governed by the terms & conditions of allotment & the earlier applicable EMPs, strictly within the four walls of the contract agreements between the parties. It has been reported by HSIIDC that about 44% of the allottees in Udhyog Vihar Gurgaon have already opted for the EMP-2011 of their own volition. Thus, there could not have been any grievance on this account. Even then, the petitioner Chamber preferred to challenge the same before the Hon'ble Punjab & Haryana High Court and hence this representation, which is being decided through this order.

9. The petitioner Chamber has raised a total of 14 issues in their representation. I have gone through the same and, as stated earlier, also studied a number of judgments delivered by the Hon'ble Punjab & Haryana High Court and the Hon'ble

Apex Court to reach conclusions in respect of each one of these issues. These 14 issues are addressed as follows:

9.1 Allotment of industrial plots on free- hold basis – Right of resumption.

The first and foremost grievance of the petitioner-Chamber relates to the right of the HSIIDC to resume the plots, being a free-hold property, and various restrictions imposed by the HSIIDC in its allotment letters/ EMP-2011 with reference to transfer of plots, after implementation of the projects and execution of the Conveyance Deeds, being not valid and hence legally not binding on the allottees. This issue is examined in the following paras:

- (i) The petitioner- Chamber appears to have a misconceived notion of the term **“free-hold”**. The industrial plot, situated in a designated industrial zone/ Estate developed by the HSIIDC, is meant to be used only for the approved industrial activity and continuous adherence to the building bye-laws and zoning regulations. It does not confer any unbridled rights on the allottees qua its use and, as such, they are at all times required to comply with certain conditions/ guidelines including the building bye-laws and the zoning regulations, as mentioned in the terms & conditions of allotment/ agreements/ conveyance deeds and the applicable EMP.
- (ii) The expression and character of **“free-hold”** herein has to be understood qua the **“lease-hold”** status of an industrial plot, which means that the allottees are only required to pay the price of the plot and not the lease premium or lease money on annual basis. To that extent, the term “free-hold” is not absolute and is restricted or restrained by the accompanying terms and conditions of allotment. It does not confer any unbridled or absolute right to an allottee to use such property in the manner he likes. Further, since the plots are allotted for industrial development at a price which is invariably lower than the market price, these plots are not meant to be used as a real estate investment; the regulatory conditions which are part & parcel of the allotment of industrial plots, are announced upfront for unconditional acceptance of the said terms and conditions by the allottees. The condition of resumption of industrial plots by the HSIIDC, as a measure of last resort, on account of violation of terms and conditions of allotment by the allottees, is part of the conditions of allotment/ earlier EMPs and nothing new has been introduced in EMP-2011. Further, any recourse to resumption of industrial plot is taken as a measure of last resort when the allottee fails to rectify the violations of the terms & conditions of allotment, even after giving notices and reasonable opportunities to rectify the violations in this behalf.

- (iii) It has to be understood that the allotment of plots by the HSIIDC is regulated by the terms and conditions of allotment, agreements executed between the allotting agency and the allottee through a binding contract between the parties. The free-hold status is restricted by the accompanying conditions and is not absolute.
- (iv) In case the activities on the industrial plots are not regulated by the HSIIDC, the same would defeat the very purpose of planned & regulated development of Industrial infrastructure for promotion of industrialization in the State. In so far as the contentions of the petitioner-Chamber with regard to restrictions on transfer of plots are concerned, it is observed that the provisions regarding transfer of plots have been rather liberalized under the EMP-2011. The first transfer is permissible after one year of the implementation of the project and for second or subsequent transfers, there are no such pre-conditions, except that the transferee is required to utilize the industrial plot only for the permissible industrial activities. No commercial or other such non-industrial activities are allowed to be carried out from the industrial plots. The permission for transfer of plots by the allottees to third parties has also been stipulated in order to (a) ensure that the allottee transfers a right to the vendee which is not at variance with what was assigned to him, (b) ensure that the plot is being transferred only when it is permissible to do so, and (c) to maintain a complete record of the allottees operating within the Estate who have to expressly undertake and accept compliance of the applicable regulations, and are required to submit an undertaking/execute agreement to be bound by the terms & conditions of allotment and to pay all the applicable charges e.g. operation and maintenance, water, sewer charges etc.
- (v) As regards the right of the HSIIDC to resume the plots even after implementation of the projects by the allottees or execution of conveyance deeds, the same has been upheld by the Hon'ble Supreme Court of India in the case of *Indu Kakkar Vs. HSIDC reported in AIR 1999 SC 296*. In this case, a plot measuring 450 sq. meter had been allotted by the HSIIDC in favour of M/s York Printers and deed of conveyance was also executed in favour of the allottee on 10.12.1982. The allottee failed to establish the industrial unit and, consequently, the plot was resumed by the HSIIDC on 16.03.1984. The allottee challenged the resumption of plot by filing a civil suit and during pendency of the suit the plot was sold in favour of Ms. Indu Kakkar vide registered sale deed dated 27.12.1989. The purchaser then got herself impleaded in the civil suit. The said suit was decreed and the resumption order was set aside by the Civil Court, Gurgaon. The HSIIDC challenged the same and the resumption of plot was upheld by the higher courts including the Hon'ble Apex Court vide its

order dated 02.12.1998.

- (vi) As a matter of fact, the Hon'ble Supreme Court has examined the issues in the light of provisions contained in the Contract Act and the Transfer of Property Act in the matter of ***Indu Kakkar*** ibid and held all such conditions as legally valid, i.e.
- (a) The allottee/ transferee cannot escape from the position that he is to abide by the terms and conditions of the agreement admitted to have been executed between the parties;
 - (b) The petitioner, who is only a transferee of the allottee, cannot claim any other right which even the allottee did not have;
 - (c) It is well within the right of the allotting agency to prescribe certain terms and conditions attached to the allotment and the right of the allottee to that extent is not absolute;
 - (d) The party to a contract cannot transfer his liabilities under the contract without the consent of the other party.
- (vii) Section 31 of the Transfer of Property Act 1882 permits transfer of a property with a condition that the interest created therein shall cease to exist in case a specified uncertain event shall happen or not happen. Likewise, the conveyance of industrial plots by the HSIIDC is accompanied by a condition that the allottee shall cease to be the owner in case of violations of the terms & conditions of allotment, which is as per provisions of section 31 of the Transfer of Property Act, 1882.
- (viii) The allotment of a property, subject to certain conditions, has been upheld by the Hon'ble Supreme Court in the case of ***Zoroastrian Co-Op Housing Society Ltd. & another Vs. District Registrar Co-Op. Societies (Urban) & Ors.*** in Civil Appeal No. 1551 of 2000, decided vide orders dated 15.4.2005. In the said case, the validity of a rule in the bye-laws of the aforesaid Housing Society allowing transfer of the flats only in favour of 'Parsee' was the subject matter of adjudication and the Hon'ble Supreme Court vide detailed Judgment dated 15.04.2005, traced the origin of the co-op Society movement and the various provisions of the Co-op. Societies Act including the amendments thereunder and observed that a society was formed only when a group of persons having certain similarities, be it in the form of profession, occupation, religion, caste or such like other factors, decide to join together and, therefore, any such condition that membership of any person outside such group shall be prohibited, cannot be an invalid condition and upheld the condition of

allowing transfer of plots/ flats only in favour of 'Parsees'.

- (ix) It is also worth examination as to in how many cases the HSIIDC has resorted to 'resumption' of plots. It was brought out by the HSIIDC that the typical examples of violation of terms and conditions, which could lead to resumption and that also as a measure of last resort, could be listed as under:
- (a) Transfer of an unutilised plot directly or under the guise of Power of Attorney or through change in constitution;
 - (b) Using the plot for a non-permissible activity e.g. commercial, offices etc.;
 - (c) Using the plot for an industrial activity, which may be of highly polluting nature and for which the CETP facilities for such polluting industry are not available in such industrial estate, or using the underground water as a raw material for the industry;
 - (d) Continued default in payment of dues of the Corporation, including the price of plots, enhancements, and other O&M charges;
 - (e) Violations of Zoning regulations and the building byelaws etc.;
 - (f) Misuse of facilities like joining up the discharge of untreated affluent into the Storm Water Drains bypassing the sewage system, or discharging the affluent without primary level treatment or encroachments on the berms creating obstructions for the free movement of pedestrians, etc.

It is an accepted position that, in all these cases, the HSIIDC first writes to the allottee pointing out the issues for rectification, issues reminders and resorts to the extreme action of resumption of plots only when the notices and reminders do not succeed in achieving the desired outcome.

- (x) Thus, the allotment of industrial plots by HSIIDC with certain conditions is perfectly within the permissible legal framework. It is also pertinent to mention here that so long as the allottees make payment of dues of the HSIIDC, use the plots for permissible industrial activities and do not commit any violation of the building bye-laws/zoning regulations or any other terms & conditions of allotment, the HSIIDC does not interfere in the peaceful possession/ enjoyment of plots by the allottees. The allottees are also free to transfer the plots in favour of third parties on fulfilment of the prescribed terms and conditions. Thus the attendant terms & conditions of allotment as well as provisions of the conveyance deeds executed by the HSIIDC in favour of the allottees, are not in any way repugnant to the 'free-hold' status of the

industrial plots and this issue is decided accordingly.

9.2 Payment of External Development Charges (EDC) in Udyog Vihar Phase-I to V & I.E. Gurgaon:

The matter pertaining to payment of EDC charges arising out of CWP No. 18005 of 2007, titled Udyog Vihar Industries Association (Regd.), Gurgaon vs. HSIIDC, has already been decided by a separate order dated 31.07.2014.

9.3 Non-execution of conveyance deeds and resumption of plots:

The petitioner-Chamber has alleged that nearly 30% of the plots sold in Udyog Vihar still do not have conveyance deeds; that these plots were sold starting from 1980s. Getting a Conveyance Deed executed in their favour, on payment of the price of the plot, is a right of the plot owner. Instead of creating road blocks by finding fault, HSIIDC should insist that every plot owner should get the conveyance deeds registered as it is mandatory under the Registration Act. Violations of building bye-laws, change of project, change of constitution, etc. may be dealt separately. Resumption of plot after receipt of full payment of the price of the plot or after executing conveyance deed is illegal. These issues are examined in the following paras:

- (i) The HSIIDC informed that as per the terms and conditions of allotment of industrial plots, the allottees are required to get the Conveyance Deeds executed in their favour after payment of full amount of purchase consideration/ tentative allotment price, including the amount of enhancement, if any. Conveyance Deeds are not executed in cases where the plots have become liable for resumption on account of (a) non-implementation of project within the permitted period, and/or (b) violations of the building bye-laws/zoning regulations, (c) unauthorized usage of premises for non-industrial/commercial activities, (d) unauthorized transfer of plots and such like conditions, which are binding on the allottees in terms of the Agreements executed between the HSIIDC and the allottee. I was also informed that conveyance deeds have already been executed in favour of the allottees in more than 70% of the cases in Udyog Vihar Gurgaon. In rest of the cases, either the allottees themselves are not coming forward to execute the conveyance deeds or multiple transfers of plots have taken place at the back of the HSIIDC through Power of Attorney without execution of registered transfer deeds. The representative of the HSIIDC also informed that they were invariably stipulating the condition for execution of conveyance deed while conveying the consent/ approval for grant of extension in time, change in constitution, change of project, leasing permission, NoC to mortgage and also while issuing provisional transfer letters, etc.

- (ii) It has been observed that in certain cases, the allottees transfer the industrial plots in favour of third parties through Power of Attorney at a time when the transfer was not permissible, and in certain other cases the 'Power of Attorney' is used as a chain for multiple transfers for various reasons, including avoidance of payment of stamp duty. The HSIIDC finds itself unable to execute the Conveyance Deeds in favour of the ultimate transferee in such cases unless each buyer in the chain comes forward and execute the Conveyance Deed in order to ensure payment of the due stamp duty to the Government qua each transaction as also to counter any claims by any of the intermediary transferee. Be that as it may, it is a fact that the current purchaser, though of his own creation, is put to considerable harassment due to these unofficial transactions through the PoAs.
- (iii) It appears that the petitioner-Chamber has challenged the legality of these conditions primarily because some of their members fall in any one or more the categories mentioned in sub-para (ii) above, and they are either not willing to: (a) present all the intermediary sellers or such intermediaries are not coming forward at this stage, (b) bear the cost of Stamp Duty for multiple transfers, and (c) pay the penalties for unauthorised transfers.
- (iv) Keeping the above in view, the HSIIDC would do well if it directs its field staff to execute the Conveyance Deeds in favour of the such of the Original allottees, wherever the same has not been done, subject to the allottee having paid all the dues of the Corporation and is in compliance of the accompanying terms and conditions;
- (v) The issue regarding resumption of plots even after execution of conveyance deeds has already been addressed under para 9.1.

9.4 Violations of Provisions of Competition Act and relevant provisions of Transfer of Property Act.

The petitioner-Chamber has alleged that HSIIDC puts many conditions in its agreements and the allottees have to accept such one-sided conditions because they don't have any other option, as the HSIIDC has been designated as the sole nodal agency for development of all industrial infrastructure in the State. They have alleged that since the HSIIDC is in a dominant position, prescription of such conditions is in violation of the provisions of Competition Act and the Transfer of Property Act. This issue is examined in the following sub-paras:

- (i) In the first instance, it was argued by the HSIIDC that though the HSIIDC is the designated nodal agency of the State for development of planned industrial infrastructure in the state, it sought to deny its monopoly or dominant

position in view of the following:

- (a) According to a recent survey got conducted by the Directorate of Industries through M/s Mott MacDonald in respect of 69,233 industrial units, only about 30% of the industrial units were found located within the planned industrial areas developed by the State agencies e.g. HSIIDC, HUDA and the Directorate of Industries;
 - (b) The HSIIDC has allotted only about 16,000 plots in the Industrial Estates developed by it so far, which constitutes only about 25% of the total industrial units in the State.
 - (c) About 65% of the Industrial Units are located over land purchased by the Entrepreneurs themselves in the open market and obtained CLUs for the same;
 - (d) Licenses are being granted by the Town & Country Planning Department for development of Industrial Colonies through the private initiatives.
- (ii) The issue regarding legality of the terms and conditions prescribed by the HSIIDC qua provisions of the Contract Act and the Transfer of Property Act has been addressed by the Hon'ble Supreme Court and the Hon'ble High Court through a catena of judgments, the case of **Indu Kakkar** (cited above) being the most relevant in this behalf.
- (iii) Notwithstanding the above legal position, it is important to examine if the terms and conditions imposed by the HSIIDC to the allotment of plots developed by it are reasonable or not. So far, no court of law has found these conditions unreasonable by any standards.
- (iv) The industrial plots are developed and allotted by the HSIIDC generally on cost basis as per the broad policy of the Corporation. The petitioner-Chamber cannot allege coercion on the part of the HSIIDC as the Regular Letter of Allotment (RLA) issued by the HSIIDC containing detailed terms & conditions is an 'offer' on the part of the HSIIDC for allotment of the industrial plot to an allottee and the allottee is required to signify his acceptance to the said terms & conditions of the said RLA within a specified period, failing which, the allotment lapses. Thereafter, the allottee is also required to execute an agreement with the HSIIDC containing these terms & conditions in line with the conditions specified in the RLA and, thereafter, possession of the plot is handed over to the allottee. Therefore, the allottee cannot allege that he was not aware of the terms and conditions of allotment or he was in any way

coerced by the HSIIDC to accept the allotment of the plot and sign the agreement.

- (v) The Hon'ble Punjab & Haryana High court had observed in case of *M/s Trishul Industries Vs. State of Haryana* decided on 26.5.2006 that a person who signs the document which contains contractual terms is bound by them even if he had not read them and may also be ignorant of the precise legal effects.
- (vi) In view of the above, I am of the considered view that the objective of declaring HSIIDC as a nodal agency of the State Government for development of industrial infrastructure in the State of Haryana is for the overall benefit of industry/ public at large and also to ensure regulated balanced regional industrial growth throughout the State of Haryana. The HSIIDC does not in any way hold the dominant position as an industrial infrastructure development agency as there are a number of private players who are entitled to establish and develop industrial estates/colonies after complying with the provisions of the relevant laws/rules. The individual entrepreneurs are free to establish their industrial units on private land purchased by them after obtaining necessary permission/CLU from the concerned authority. As mentioned earlier, only about 30 to 35% of the Industrial Units are located within the planned Industrial Estates developed by HUDA and HSIIDC and the remaining 65% of the industrial units are located over land purchased by them outside these planned industrial areas. Thus, it cannot be said that the HSIIDC, as a nodal agency of the State Government, is enjoying any dominant position and its terms & conditions of allotment of industrial plots are one sided and coerced upon the allottees and this issue is decided accordingly.

9.5 Restrictions on leasing and demand of leasing fee:

The petitioner-Chamber has alleged that the HSIIDC demands fees for various activities to which it has no right. One of the instances given is the demand for leasing fee. According to them, these fees are illegal and impinge the law of the land. This issue is examined in the following sub-paras:

- (i) I have gone through the provisions contained in EMP-2011 pertaining to leasing/renting of premises. The industrial plots are being allotted by HSIIDC in the Industrial Estates for setting up of industrial units in a regulated and planned manner. The concept of free-hold ownership of the plot vis-à-vis the terms of allotment have already been discussed in detail in point No. 9.1 hereinabove. The allottee can utilize the allotted plot only for permissible industrial activity. The leasing of industrial plots was not permissible at earlier stages. However, in order to ensure optimum utilization of the built-up

industrial space, especially for the first generation entrepreneurs who may not have sufficient capital to make upfront investment in the land and buildings, the facility of leasing of the premises was allowed by the HSIIDC for permissible industrial activities only. The conditions for grant of leasing permission have been liberalized under the provisions of EMP-2011. For instance:

- (a) Earlier, there was a restriction on the number of lessees on an industrial plot and now there is no such restriction and Multiple leasing has been allowed;
 - (b) No leasing fee is payable if the allottee gives his built-up space on lease after having used the plot/building for its own industrial use for a period of five years or more;
 - (c) An allottee, who wishes to use his built-up space for leasing, before having used the premises for a period less than 5 years, is required to pay the leasing fee only once which is @ 50% of the transfer fee.
 - (d) However, every allottee is required to furnish information with regard to the details of the lessees/unit/ industrial activity with change of every lessee for which a nominal processing fee is payable.
- (ii) Needless to mention that non-industrial activities/commercial activities are not permissible and in case the allottee is found having leased out his space for such non-permissible activities, one has to face the penal provisions as per the EMP-2011. The objective of this provision is to have a planned regulated environment in the industrial park/town developed by the HSIIDC for the overall benefit of the industry.
- (iii) The rationale behind levy of leasing fee in the cases mentioned under (c) above lies in the fact that once the allottee stops utilising the premises for running his own industrial activity, he ceases to an entrepreneur himself and becomes an investor, which indeed is not the primary purpose for allotment of the industrial plots. As such, there is no illegality in the terms and conditions prescribed by the HSIIDC in this behalf.

9.6 Requirement of prior permission from HSIIDC for Change of project:

The petitioner-Chamber has also represented that the HSIIDC wants an entrepreneur to seek permission even for change in project. No entrepreneur sets up industry to fail. It is only under extreme duress and after suffering huge losses that he musters up courage to once again get up to start another venture. This issue is

examined as under:

- (i) It was explained by the HSIIDC that the change of project by the allottee for undertaking industrial activities is not prohibited and requirement of prior permission for any such change is to ensure that the industrial plots are utilized by the allottees for the permissible industrial activities only and the changed project is not covered under the negative list or having content of pollution beyond the permissible norms, involve high water consumption, etc. Further, the HSIIDC has also developed some dedicated parks such as Food Park, Apparel Park, Footwear Park, Technology Park, Agricultural Implements Park, etc. where the request of the allottee for change of project is considered only for the specified activities permissible in such dedicated parks. It is for this reason that the condition to obtain prior permission of HSIIDC by the allottee for change of project has been stipulated. This stipulation not only ensures usage of industrial plots for the permissible industrial activities but also safeguards the allottees at the initial stage itself, from entering into a venture, which may not be permissible on the industrial plots, thereby protecting the allottees from financial & other losses at a later stage.
- (ii) As regards the issues raised by the petitioner-Chamber that a project is changed only when one fails, it would be relevant to mention that the change of Project takes place at different stages. In the first instance, a project report is submitted along with the application for allotment of a plot. A lot of sanctity is attached to the Project Report because the scale of fixed capital investment and the justification for allotment of plot of a particular size is linked with the proposed project.
- (iii) It has been observed from the past experience that, earlier, a majority of the applicants would just buy an off-the-shelf Project Report for a small amount from the market and press their claim for allotment of a plot of 'X' size justifying his project requirements. Once the plot was allotted, the applicant would pose a project which may justify half the size of the plot with a scale of fixed capital investment which may only be a portion of the level projected initially. It has also been observed that these are the candidates who may either be the investors (and not entrepreneurs) or they constitute the potential candidates who like to invest and speculate in the plots rather than being partners in growth of industrial production. As such, the permission for 'Change of Project' before the implementation of the project is an essential requirement;
- (iv) There may be cases who may need to change a Project during mid-stream on account of changes in the business environment. In their cases, there is

absolutely no hurdle except that the project should meet the permissibility norms.

- (v) The HSIIDC is now moving towards e-Governance wherein it is proposed to conduct all these transactions in the on-line mode, which should address the problems relating to any delays in grant of requisite approvals in a timely fashion. Nonetheless, the requirement for permission for change of project cannot be dispensed with in view of the above factors.

9.7 Change in Constitution & Levy of Transfer fee.

The petitioner Chamber has contended that after the execution of conveyance deed, the transfer of property is governed by the Transfer of Property Act, the Registration Act, the Stamp Act and the Companies Act. Any action to extract fee on this account by the State Government or its undertakings is against the settled law. They have prayed that the restriction on change in constitution and levy of transfer fee be declared as ultra-vires the statutes and the settled law. I have heard the contentions of both the parties on these issues in detail. These issues are addressed as under:

- (i) In the first instance, let it be clarified that the industrial plots are allotted by the HSIIDC and 'Conveyed' in favour of the allottees attendant with certain terms and conditions. As such, these allotments and conveyance deeds are regulated under Sections 25 to 34 of the Transfer of Property Act. The conditions imposed by the HSIIDC in its Conveyance Deeds are neither infeasible of fulfilment nor illegal. Similarly, the same position holds good qua the provisions of other statutes referred by the petitioners. As a matter of fact, the Stamp Act also deals with these situations and the Conveyance Deeds executed with certain attendant conditions are permissible within the legal domain qua the quoted or referred statutes.
- (ii) As regards the issue of 'Change in Constitution' and levy of 'Transfer fee', it is observed that there is a need to understand the difference between the change in constitution of the allottee & transfer of industrial plot from one entity to another. The industrial plot is allotted by the HSIIDC to the entrepreneurs for setting up of permissible industrial projects, after conducting personal interviews and scrutinizing their project parameters/credentials. As per the terms of allotment, the applicant, who is found suitable for allotment of an industrial plot by the Corporation, is required to set-up the approved project within the permissible period. Sometimes, the allottee intends to associate his/ her family members or third party to pool in the resources and implement the approved project by forming a partnership firm

or a joint stock company under the provisions of the Companies Act. The inclusion or exclusion of family members in the venture is permissible without any restrictions. The nomenclature given by the HSIIDC in such cases is called 'change in constitution' of the allottee. The Change in constitution takes place in the following cases:

- ❖ From a sole proprietor to a Partnership Firm or a Company;
- ❖ From a Partnership Firm to a Company;
- ❖ Change in the share-holding of a Company with induction of new promoters/ directors/equity holders

(iii) In case the change of constitution is from a sole proprietor firm of the allottee to a partnership firm or a company within the family members, the same is not treated as a transfer and hence permissible without any restrictions. However, the past experience has shown that the 'Change in Constitution' has been used as a surreptitious way for transfer of unutilised plots. For instance, a sole proprietor allottee inducts a partner with more than 50% equity/ share, the new inductee actually buys out such share with an explicit understanding (through a Power of Attorney) that the original allottee would get out after one year of implementation of the project. In case of a partnership firm, the original allottees may have three partners, and then one or two more partners are inducted with a majority share yielded to them. Much more innovative is the Company route wherein the allottee is a company, with, say three promoters. New promoters are inducted and the original promoters walk out – the allottee remains the same Company but, in actual practice, the plot stands transferred in new hands.

(iv) The HSIIDC had earlier been permitting 'change in constitution' of the allottee by induction of third party subject to the condition that the original allottee shall continue to retain at least 51% of the total shareholding in the proposed venture till one year after implementation of the project. The third party could participate up to 49% of the total equity contribution in the project. However, it was observed by the HSIIDC that this provision was being grossly misused by certain allottees/ property dealers for unauthorized sale of vacant plots under the garb of change in constitution. As such, the Estate Management Procedures have been beefed-up to counter such dubious ways of making money through the transfer of unutilised plots. In cases of change in constitution involving a third party induction, the same is permissible only after the project has been implemented by the original allottee and such change in constitution is treated as a transfer of industrial plot.

- (v) In order to curb this practice, the HSIIDC made a provision in EMP-2011 for charging fee equivalent to transfer fee in case of change in constitution involving induction of third parties. However, lately it was observed that some allottees/third parties tend to transfer the vacant plot without implementing the project just after allotment by paying the fee, therefore, the HSIIDC has taken a decision to disband the provision of 'change in constitution' involving induction of third party without implementation of the project. In this way the Corporation has been able to control the speculative activities and unauthorized sale of vacant plots. In exceptional and genuine cases, where the project requires technical collaborations/ know-how, foreign equity participation, the same is permissible on case-to-case basis, considering merits of each case.
- (vi) As far as levy of transfer fee on outright transfer of plot in favour of a third party is concerned, as per EMP-2011, transfer fee is being charged by the HSIIDC only on the first transfer and no transfer fee is charged in respect of second/subsequent transfers of plots. The rationale for charging transfer fee in the case of first transfers comes from the procedure for allotment of plots by the HSIIDC to the prospective entrepreneur. It is an admitted fact that the allotment rate of the industrial plots of the HSIIDC is invariably lower than the prevailing market rates. The allotment is made by the Corporation in favour of the selected applicants after conducting interview taking into consideration the various factors like credentials of the applicant, educational qualification, experience in the line, understanding/ knowledge of the project, net-worth of the promoters, working results of the existing operations, resource position, performance during the interview, etc. Preference is also given to the applicants who are under the category of ex-serviceman, women entrepreneurs, unemployed engineering graduates/ polytechnic/ ITI trained candidates, first generation/new entrepreneur who display exceptional entrepreneurial ability/skill etc. The selected applicant is required to implement the project and also to retain the ownership of the plot at least for a period of one year. In case the allottee has run the project successfully for a period of at least five years, no transfer fee is levied by the Corporation. However, in case the allottee transfers the plot after one year of implementation of the project, normal transfer fee is levied by the Corporation. The provision for retention of plot for a period of at least one year of implementation by the original allottee and payment of one time transfer fee is just to discourage speculative deals and sale of unauthorized vacant plots by the allottees.
- (vii) The issues regarding charging of various fees and enforcing terms of the

contract have been decided by the Hon'ble courts in various matters. A few such decided cases are as under:

- (a) In the matter of *DLF Universal Ltd. & another Vs Director Town & Country Planning Haryana* in Civil Appeal No. 550/2003 decided on 19.11.2010, the Hon'ble Supreme Court of India has upheld the charging of transfer/other fees levied by the developer on its allottees and held that the sale and purchase of plots/flats is a transaction between a willing vendor and a willing vendee and the Director Town & Country Planning (DTCP) is not empowered to meddle with such transactions. In this case, the Hon'ble Court was dealing with the applicability of the order passed by DTCP with regard to the agreements entered into between the licensees who had developed the colonies after obtaining licenses from the Town & Country Planning Department and the plot / flat buyers agitating for deletion of the clauses regarding the levy of extension fees and maintenance fees on the ground that the same was not permissible under the law. The DTCP, besides directing non-charging of the extension fee, also directed the licensees to refund the fees to the Government and also to stop allowing transfer of the plots after obtaining full payment and to ensure immediate registration of the conveyance deeds where full payment of the plots/ flats had been received. The Hon'ble Supreme court observed that after obtaining licenses under the Haryana Development and Regulation of Urban Areas Act, 1975 and setting up the colonies, the licensees sold the plots and entered into agreements with the plot holders which determined the mutual rights and obligations between the licensees and plot holders. The mutual rights and obligations between them are structured by the agreements voluntarily entered into by them and all the terms and conditions, covenants were mutually agreed by and between the parties. It is a contract between two willing contracting parties whereunder the terms and conditions are mutually agreed upon. It has been further held that it is a settled principle of law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values and policy that the contract is designed to actualize. It comprises joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. In this case, the agreement was entered into by the licensee and purchaser, inter-alia, providing that the purchaser shall, after approval of building plans from the competent authority,

commence construction of the house on the plot in a period of three years from the date of sale deed and in case the purchaser fails to commence the construction within the stipulated period, the seller shall be entitled to resume the plot and re-sell the same. There was also a provision for extension of period for construction upon and subject to payment of additional charges. In these circumstances, it was held by the Hon'ble Supreme Court that there was nothing in the Act of 1975 or the rules and regulations framed thereunder which would prohibit the owner of the land from collecting such charges from the buyers. It was contended by the licensee that the provision for payment of extension fee has been provided in the agreement only in the interest of speedy development of each colony and in order to prevent purchase of plots by the speculators, who may keep the plot vacant without making any construction with the only object to earn profit by selling the plot at a future date, and such an act may prove detrimental to other purchasers and will also obstruct all round development of the area. It has been held that the sale and purchase of plots/flats is a transaction between a willing vendor and a willing vendee and the Director Town & Country Planning (DTCP) is not empowered to meddle with such transaction. In view of the above, the Hon'ble Apex Court found no lacunae in the Developer licensee charging such fees.

- (b) The Hon'ble Supreme Court has upheld in many other cases the sanctity of the contract and observed that the respondents, after accepting the conditions imposed by the authorities, enter into the realm of a concluded contract with the authority and can only claim the right conferred by the said contract. The parties are bound by the terms of the contract unless some statute steps in and confers some special statutory obligations (Reliance is placed upon *Bareilly Development Authority & anrs. Vs. Ajay Pal Singh and Ors*, AIR 1989 SC 1076).
- (c) Similarly, in the case of *Radha Krishan Aggarwal Vs. State of Bihar and Ors*, AIR 1997 SC 1496, it has been held that after the State or its agents have entered into the field of ordinary contracts, the relations are no longer governed by the constitutional provisions but will be governed by the legally valid contracts, which determine the rights and obligations of the parties *inter-se*.
- (d) The Hon'ble Punjab & Haryana High Court has held vide its order dated 05.12.1996 in another case titled *Gulmohar Estates Ltd. & Ors Vs. State*

of Haryana & Anr. that in case of contracts freely entered into with the State, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State) for the purpose of altering or adding to the terms and conditions of the contract merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contract (which may be statutory in some cases) and the laws relating to contracts. It has further been held that there is no compulsion on any one to enter into these contracts. It is voluntary on both sides and there can be no question of the State power being involved in such contracts. The State does not guarantee profit to the licensees and neither there is any warranty against incurring losses.

(e) In another case titled *Panna Lal & Ors Vs. State of Rajasthan and Ors* reported in 1975 (2)SCC 633, it has been held that a person who enters into a contract with the State and its agencies cannot resile from the express obligations undertaken by him. In this particular case, the licensee had sought quashing of certain conditions of the contract on the ground that the same were extremely onerous and arbitrary. The Hon'ble Supreme Court held that licenses are contracts between the parties. The licensees voluntarily accepted the contracts. They fully exploited the contracts to their advantage to the exclusion of others and it will not be open for them to resile from the contracts on the ground that the terms of payment were onerous. The licensees accepted the licenses by excluding their competitors and it would not be open to the licensees to challenge the terms either on the ground of inconvenient consequence terms or of harshness of terms.

(f) In yet another case titled *Delhi State Entrepreneurs Association and Ors Vs. Delhi State Industrial Development Corporation*, the Hon'ble Delhi High Court held that Public Interest requires a proper administration of public funds, public bodies cannot be expected to suffer losses and shoulder heavy financial burden to meet the alleged expectations of the beneficiaries of any welfare scheme.

(viii) In view of the foregoing, I am of the considered view that the terms & conditions of allotment duly accepted by the allottees pertaining to payment of transfer/other fees are binding on the allottees and are not in any way violative of the freehold status of plots allotted by the HSIIDC.

9.8 Imposition of heavy fees and penalties for regularizing excess coverage & zoning violations:

The petitioner-Chamber has contended that the violations, if any, have to be dealt with on a policy applicable to all and not on a pick and choose basis. In fact, it is the Government itself which increased FAR from 75% to 200% or 250% selectively and FAR of 250% should be available to all. The augmentation charges for the additional area can only be justified if they are to be ploughed back transparently to effectively ease the pressure on services. They have prayed that all fees and penalties, except for major violations of building bye-laws and pollution norms, be declared ultra-vires the settled law and the industry be permitted to have a uniform FAR of 250%, without any discrimination. These contentions are being examined in the following sub-paras:

- (i) As regards the Floor Area Ratio (FAR) permissible for the industrial units, the same is governed by the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975, enforced & regulated by the Town & Country Planning Department, Haryana. The MD/ HSIIDC has been notified as the Director, Town & Country Planning, in respect of the Industrial Estates developed by the HSIIDC. However, he has no discretion and is authorised to act in accordance with the framework defined and decided by the Town & Country Planning Department in respect of Layout plans of the Industrial Estates, F.A.R, the Zoning Regulations, and the building byelaws.
- (ii) At the time Udyog Vihar, Gurgaon was planned, the permissible FAR for Industry was only 75% (i.e. 0.75). Keeping this in view, the internal circulation roads within the Udyog Vihar were planned with a Right of Way (RoW) of 12 meters, 15 meters and 18 meters and the entire infrastructure capacity was planned accordingly. As the land prices started experiencing an upward trend, representatives from various industry groups started representing to the Government for increasing the F.A.R for industry. The Government agreed to revise the same upwards from 75% to 125% for the industrial sector. Accordingly, the allottees of industrial plots had the option to avail the F.A.R. up to 125% on payment of augmentation charges which were levied on account of additional costs involved in augmenting the infrastructure facilities necessitated for the additional burden on account of increased F.A.R.
- (iii) It was in the year 2000 that the Government took a Policy decision to allow a higher F.A.R. of 250% for the IT/ITES industry keeping in view the nature of operations involved in IT/ITES industry and to encourage the IT/ITES industry in the state. As such, an IT/ITES industrial unit was allowed to avail F.A.R. up to 250% meaning thereby that the allottee could construct up to 2500 sq. meter of covered area, in addition to the basements (not counted in the F.A.R) on a plot of 1000 sq. meter area.

- (iv) Following this special benefit announced for the promotion of the IT/ITES Sector, demands and representations were received for permitting the higher FAR of 250% for the industrial units engaged in the business of manufacturing of ready-made garments and the footwear industry, arguing that it was feasible to operate the manufacturing units in these sectors from vertically expanded spaces as it did not involve use of any heavy machinery and equipment. It was pursuant to the demands from these sectors that the Government agreed in January 2009 to permit a higher F.A.R. of up to 250% for these sectors also.
- (v) However, while acceding to the said demand in principle, the Government also decided separate norms for the old industrial estates and the new Industrial estates keeping in view the constraints of the existing RoW of the internal circulation roads in the old industrial estates. By now, the adverse impact of higher F.A. R. on account of higher density of working population, and consequently the increased pressure and requirements for smooth management of the pedestrian and vehicular traffic, had come to the fore-front. It may be mentioned here that the minimum RoW of the internal circulation Roads in the Industrial Estates developed after 1996 was kept at 15 mtrs, which has now been further revised to 18 mtrs in order to keep the planning parameters futuristic.
- (vi) On the one hand the allottees were given the benefit to construct additional built up area on the plots allotted by HSIIDC while, on the other hand, this increase in FAR had a visible adverse impact on the existing infrastructure facilities i.e. water supply, sewerage, drainage, etc. including huge congestion on the roads. This situation has been further compounded as a large number of allottees have indulged in serious and flagrant violation of the zoning regulations and building byelaws, which the petitioner association is referring to as 'minor violations'. The HSIIDC has been regularly augmenting the existing underground infrastructure facilities e.g. water supply, sewage and drainage (which are not entirely dependent on the RoW of the internal circulation roads) but is helpless in widening the existing roads within the Udyog Vihar area.
- (vii) It was in this background that the Town & Country Planning Department introduced different scales for increased F.A. R. for the industrial units linked with their locations on the RoW of the internal circulation roads. As such, if the plots of a few industrial units are located on a road with a RoW of 12 meters and they wish to avail the F.A.R. permissible to an industrial unit located on an internal circulation road with a RoW of 15 or 18 mtrs, they can avail of the same if these allottees are willing to surrender the requisite area

from their plots for the widening of the RoW of the road in their front. As a matter of fact, if the units located on both sides of a road are willing to leave an area of 1.5 mtrs each from their plots, they can avail the F.A.R. permissible for the higher category. But they want the FAR of a higher category without fore-going the area from their plots. The differentials in permissible F.A. R. are based on the principles of intelligible differentia. Thus, the request of the petitioner to allow uniform FAR of 250% for all industry is not found feasible of acceptance.

- (viii) As regards levy of penalties for the so-called “minor violations”, it would be contextual to explain the concept of the Zoning Regulations and the Building Byelaws. The Zoning Regulations define the envelop area of a building and the violations thereof are non-compoundable. These, as per the regulations, can only be rectified, which in most cases would involve demolition of the structures protruding outside the zoned envelope. As regards the Building byelaws, the nodal department has defined the concept of a “Sanctionable Plan” and the “Compoundable Plan”. The provision for compounding herein has been kept to regularise such violations which may or may not be bona-fide but are indeed covered under the ‘minor violations’. Penalties for compounding of such minor penalties have also been prescribed by the nodal department.
- (ix) It is further pertinent to add here that all citizens are required to comply with certain set of rules and regulations in order to avoid the chaotic situations in the overall interest of the users and control of haphazard growth. A regulatory mechanism has to provide for the consequences of non-compliance with such regulations. In the case of industrial plots, the subject being of civil nature, the regulatory regime of consequences has to be in form of pecuniary penalties and fines where the non-compliance is of a compoundable nature. The Estate Management Procedures of the HSIIDC are directed towards this system that ensures peaceful enjoyment of the property in the hands of genuine entrepreneurs who are complying with the rules and regulations to conduct their business in a free and fair manner. The entire system would crumble under its own weight in the absence of any such regulatory regime. It is further mentioned that a one time voluntary disclosure and amnesty scheme had been introduced under the Industrial Policy 2011, under which a window was opened for regularization of the compoundable violations, based on self disclosures, by charging the normal fees. The same was adopted by the HSIIDC also. It may further be added that the violations which are being referred to by the petitioners as ‘minor violations’, are in fact combined violations of Zoning Regulations and Building bye-laws; most notable being

construction of buildings with FAR in excess of permissible limits, constructions in setback areas jeopardizing the safety parameters. Thus insistence by the HSIIDC for rectification/ regularization of those violations by demolishing the unauthorized constructions/ regularization of compoundable violations by charging fee/ penalty is not only legally sustainable but amounts to a default in ensuring compliance of its duties if it fails to do so.

- (x) The Hon'ble Supreme Court refused to stay demolition of the flats (as there were non-compoundable violations) in a very recent case pertaining to violation of building bye-laws of a Society constructed by the Campa Cola Residents Association and the residents were only given breathing time to vacate the premises.
- (xi) I would like to add here that I have been trying to impress upon the various representative bodies of industry at various platforms to opt for self-regulation in these matters rather than leaving it to the officialdom where all kinds of complaints get generated. As a matter of fact, the HSIIDC has left the sanction of building plans and completion certificates on self certification basis, but it is unfortunate that very few have availed of this facility. The allottees have been repeatedly advised that they may submit self-certified certificates to the effect that they are compliant with the laws in this behalf, but this has not helped. We cannot afford to live in a non-compliant environment and yet keep raising the accusing fingers somewhere else.

9.9 Appointment of HSIIDC as the Nodal Agency for development and maintenance of industrial infrastructure, completion of development and handing over to Municipal Corporation, Gurgaon.

The petitioner association has prayed that the industrial estates developed by the HSIIDC in Gurgaon be transferred to the Municipal Corporation of Gurgaon and the Property Tax be levied only from the date of transfer. This issue is addressed as under:

- (i) It is important to clarify in the first instance that 'Property Tax' levied by a Municipal Body is in the nature of a Sovereign Tax and it does not hold the promise of maintenance of facilities and service in lieu thereof. This is an established and accepted legal principle.
- (ii) HSIIDC, as the nodal agency for development of industrial infrastructure, is also providing other amenities like maintenance of roads, water supply system, sewerage system, storm water drainage, street-lights, security, CETPs, etc. The expenses incurred on maintenance of these services for a period of initial five years is included in the price of the plots and, as such, the cost of

maintenance for an initial period of 5 years is incurred by the HSIIDC and no amount is recovered from the allottees. After completion of five years, the expenditure incurred on maintenance of these services is recovered from the allottees on cost basis, after allowing the credit of recoveries from the allottees on account of water/sewer charges. Thus the HSIIDC is following the 'user pays' principle for the services it maintains and there is no component of overcharging/ profiteering by HSIIDC in this activity.

- (iii) As a matter of fact, the issue of operation and maintenance of facilities has come up for discussions with the industry representative bodies during a number of interactive sessions. The HSIIDC has given the following options to these representative bodies in this behalf:
 - (a) That the Industry representative body may take over and manage the operation and maintenance (O&M) of the services and facilities from the HSIDC after completion of the industrial infrastructure and the HSIIDC would not charge anything from the industry on this account, or;
 - (b) Constitution of Governing Bodies for each industrial estate, comprising of Industry representatives from such estate, who should take decisions regarding management of the facilities and services and the HSIIDC can act as the implementing arm as per the decisions taken by them. However, all contracts will have to be awarded by the respective Governing Bodies and charges towards O&M would also be determined by them. These bodies would also be responsible for controlling the budgets for the same; or
 - (c) The HSIIDC may continue to undertake the O&M as it has been doing so far and the O&M charges worked out on per sq mtr basis would be payable by them. In this model also, it has been proposed to associate the industry representative bodies in their advisory capacity.
- (iv) Of late, the Corporation has adopted a system of participative management of these services by constituting a committee comprising of the representatives of the allottees/ industry as well as officers of the HSIIDC at every Field Office. The maintenance services are carried out with the concurrence of the committee members and the total expenditure on operation & management of these services are also proportionately shared by the allottees/ industries of the respective estate. This concept of participative management of Operation and Maintenance (O&M) services has been appreciated by the industry in most of the estates.

- (v) The problem is that we generally look for and expect the 5-star facilities at *Dhaba* rates, which is a tall order to achieve.
- (vi) As regards the request of the petitioner-Chamber for transfer of these industrial estates to the Municipal Corporation, it is suspected that this request is driven by a comparatively lax regulatory regime with the local bodies. As a matter of fact, the Government has decided to transfer all the industrial estates developed by the Directorate of Industries and HUDA to the HSIIDC in a phased manner keeping in view the expertise developed within HSIIDC and its focus on maintenance of the facilities and services in the industrial estates. There is also an associated problem in the sense that a number of representative bodies have emerged in different Industrial areas. Udhog Vihar itself has four or five such bodies. They are not free from their internal politics and it becomes difficult to interact with different bodies in this behalf. I am of the considered view that the proposal of the petitioner-Chamber not a consensus view of the allottees. In fact, a number of allottees have been insisting that the operation & maintenance of these services must be retained by the HSIIDC and not by the other body corporate/municipality.

9.10 Requirement of 'No Objection Certificate' from HSIIDC before transfer/ mortgage of plot:

The petitioner-Chamber has represented that for transferring of property and mortgage of property for obtaining finance, HSIIDC has been insisting on NOC for which there is no justification and which is creating hurdles in obtaining finance. They have prayed that the provision of the industrial policy requiring NOC from HSIIDC for transfer of property be declared ultra-vires the settled law.

- (i) It is observed in this behalf that the HSIIDC is performing twin functions of a development agency of the State Government for providing requisite infrastructure facilities and as a regulator for proper management of the industrial estates/ parks for the overall benefit of the industry. To meet this objective, the HSIIDC require that before transferring the industrial plot to a third party, the allottee has to obtain NOC from HSIIDC, so as to ensure that the allottee fulfils the conditions precedent for such transfers/ mortgage. In addition, the allottee has also to comply with the various statutory norms with regard to the construction of buildings/zoning etc. and required to pay the O&M charges like the maintenance, water, sewer charges etc. in addition to the cost of enhancement, if any, awarded by the Courts. The requirement of NOC from HSIIDC before transfer/registration of sale deed/mortgage of industrial plots is fully justified for safe-guarding the interests of the HSIIDC per-se as well as the prospective buyers, as there have been various instances,

wherein, the resumed properties have been sold fraudulently by the allottees to some innocent buyers and/or mortgaged to banks/ financial institutions, leading to long drawn litigation.

- (ii) I do not find any illegality in the system introduced by the HSIIDC in this behalf. However, the HSIIDC is expected to deal with such cases expeditiously and dispose of the requests of the allottees in a time bound manner. Hopefully, the roll-out of eGovernance system, and the time-lines provided therein, should help in improving the requisite efficiencies.

9.11 Discrimination in floor area ratio

The petitioners have prayed that the policy of allowing higher FAR should be made uniformly applicable to all and not on pick & choose basis.

This issue has already been addressed in detail under para 9.8 hereinabove.

9.12 Community Building in Phase-V.

The petitioner-Chamber has prayed that as per the Act of 1975, all the developers are required to provide a community building free of cost to the plot owners out of their profits. HSIIDC being a “No Profit No Loss” company budgeted over Rs. 1.00 crore for this purpose in 1989 and charged this amount from the plot owners of Phase-V, Udhyog Vihar, Gurgaon. They have built a building for this purpose but converted it for their own luxurious office, thereby, depriving the plot owners of a community centre. The response to these observations is as under:

- (i) The representative of HSIIDC informed that the office building constructed by the HSIIDC in phase-V was never intended to be used as a Community Centre by the allottees of Udhyog Vihar. However, the HSIIDC has also created conferencing facilities for a capacity of about 250 to 300 persons in the same office premises for use by the industry at very nominal rates. It was further added that the HSIIDC had allotted a shed measuring 156 sq. meter in Udhyog Vihar, Phase-V, Gurgaon, in favour of one of the industrial associations for the benefit of the allottees. However, the same has been occupied by one of the associations, who is not the petitioner in the present case.
- (ii) Community Buildings are created for residential sectors. In the case of Industrial estates, facilities like the labour welfare centres, crèche for the workers’ children are being created now in addition to the worker housing.
- (iii) As regards the amount earmarked for the Community Building and its recovery from the allottees of Phase-V, the petitioners are raising the same

issue which has already been addressed in the order passed on the subject of External Development Charges (EDC) arising out of CWP No. 18005 of 2007, titled Udyog Vihar Industries Association (Regd.), Gurgaon vs. HSIIDC, by a separate order dated 31.07.2014.

9.13 Re-defining the utilization of Surplus against 'No profit No loss'.

The petitioner association has prayed that the provision of transferring surplus from one area to another be declared as ultra-vires the Act of 1975 and the settled law. HSIIDC be directed to provide its account area-wise and justify how it worked on 'No Profit No Loss' basis for each area. This issue is addressed in the following paras:

- (i) It is important to first de-mystify the so-called concept of No-Profit-No-Loss. The complete mechanism and rationale for pricing of industrial plots and other supporting uses has been explained in Chapter-2 of the EMP-2011, which is available on the web-site of the Corporation in the public domain. I do not wish to reproduce the same here to avoid repetition.
- (ii) Let it be clear that the HSIIDC is a company registered under the Companies Act and its equity is 100% owned by the State of Haryana. It has been given the mandate to undertake the functions as mandated through its Articles of Association, of which the most important being the development and management of planned industrial infrastructure in the state. It is accountable to the State Legislature through submission of its Annual Reports and Accounts on the floor of the house. Its operations and accounts are subject to audit by the Comptroller & Auditor General of India. It is liable to pay all the statutory taxes, including the income tax on its income. Its operations are driven according to the policies laid down by the Government in this behalf. Given the above legal and administrative framework, it does not lie with a group of persons or some associations or Chambers to hold it accountable to furnish its accounts to anybody and everybody. If the petitioners think that the HSIIDC is accountable and answerable to them individually, they are mistaken in their belief. If that were so, no organisation can function and deliver. The petitioner-Chamber cannot assume the role of the State Legislature in this behalf.
- (iii) It is in furtherance of the Articles of Association of the Company and the policies of the State Government that the HSIIDC undertakes and carries out its operations. Development of less developed areas, utilising funds generated from certain areas to other areas for balanced regional development, or funding of the over-arching infrastructure projects through the surpluses

generated by it are part of the mandate given to the Company by the Government.

- (iv) Having said the above, it is relevant to clarify that the HSIIDC has always tried to price its industrial plots based on the cost parameters. Chapter 2 of the EMP-2011 consists of the entire rationale. There have been occasions when it has allotted plots at prices considerably lower than its costs, especially when it comes to attracting the mother industry in the new areas. However, of late, it has also been revising the prices of its plots somewhat closer to market rates in areas which account for huge premium over a period of time.
- (v) The HSIIDC, as a nodal agency of the State Government for development and management of planned industrial infrastructure, has been acquiring land through the Government and, thereafter, developing, maintaining and managing the requisite infrastructure facilities like roads, water supply, sewerage, storm water drainage, electrical infrastructure, CETPs etc. The industrial plots are allotted to the prospective entrepreneurs by the HSIIDC broadly on the principle of cost basis - the prices of the industrial plots are initially determined based on actual acquisition cost of raw land, administrative costs, survey and demarcation, payment of Government fee/charges, planning, development and provision of the infrastructure facilities etc. The overall costs so incurred are loaded on to the net saleable area to arrive at the tentative price of the plots. Although, the industrial plots are generally allotted by the HSIIDC on cost basis but the HSIIDC also generates surpluses by way of disposal of commercial sites. The surplus so generated is again ploughed back in meeting the investment requirements for over-arching infrastructure facilities that improve the connectivity and means of transport in the State, cross-subsidizing the plots in industrially less developed areas for balanced regional development of the State as well as directing the industrial investment in Tier-II and Tier-III areas/regions, thereby decongesting the National Capital Region. For instance, the HSIIDC utilized the surpluses generated in the process for meeting the part cost of acquisition of land for the Kundli-Manesar-Palwal Expressway, NCR water supply channel, Metro Rail Link, to name a few. These facilities add a huge value for the growth of the industry. The land is acquired from the landowners/farmers for specific public purpose i.e. development of industrial estates, creation of institutional and social infrastructure and the allottees are supposed to utilize the plots for the intended objective. In case, the allottee is not using the plot for running of its own manufacturing unit and exit by transferring the plot in favour of a third party by making substantial profits or renting it out with a view to earn rental income, nominal fee is being charged by the HSIIDC and the funds so

generated are again utilized by the HSIIDC for industrial development of the State as stated above. The issue raised by the petitioner-Chamber in answered in the above terms.

9.14 Illegal development and sale of plots in Sector - 18:

The petitioner-Chamber has submitted that the plots allotted in Sector 18, Gurgaon violate the provisions of “Work of Defence Act 1903 - Protected Zone” as there is an ammunition depot within 900 metres. It is now well known that that this land was illegally developed and allotted and that they had submitted a representation dated 16.10.2013 addressed to the Managing Director, vide which they have requested to consider the following points:-

- (a) Relocate all the units of I.E. 18 with in the area of Udhog Vihar, Gurgaon.
 - (b) Keep all the un- allotted land/ free land in the neighboring area on hold, irrespective of the purpose for which it might have been earmarked, till this issue is resolved.
 - (c) Direct the concerned staff not to issue any notices to units operating in this area and all notices issued be recalled.
- (i) I have gone through this issue in detail. As per the information provided by the HSIIDC, the Industrial Estate, Sector 18 was developed by the HSIIDC in the year 1975 onwards over an area of 55.52 acres. There are a total of 86 such plots in this Industrial Estate. About 82% of the plotted area was allotted at rates varying between Rs. 15.50 to Rs. 23.50 per sq yard and another 13.50% of the plotted area was allotted at rates varying between Rs. 120 to Rs. 195 per sq. mtr. These plots are presently covered under the restraint orders dated 17.12.2011 of the Hon’ble Supreme Court wherein the Hon’ble Court has directed to maintain status quo in respect of nature, title and possession of the subject matter property. Any further construction activity, thus is also restricted on these plots.
- (ii) The issue of violation of the “Work of Defence Act 1903 - Protected Zone” came up after many years of development of the said Industrial Estate. The said plots are situated within a distance of 900 meters from the Ammunition Depot which is stated to be a restricted zone. It is beyond the scope of this order to comment in the matter at this stage as the matter is sub-judice.
- (iii) There is no doubt that the allottees of these plots are currently allowed to use the said plots to the extent they meet the status quo conditions. However, they may not be able to use the said plots for additional coverage on account of the permissible higher F.A.R. While I am inclined to agree with the request of the

Chamber as mentioned under (c) above, it is not feasible to agree to their other requests at this stage. However, in case they still feel aggrieved on this account, and subject to their willingness, the HSIIDC should offer to refund the allotment price along with interest @ 12% since the date of allotment till the date of refund qua these plots.

The representation is decided in the above terms. Copies of this order be communicated to all the concerned parties.

Sd/-

Y. S. Malik

Additional Chief Secretary to Government of Haryana
Industries & Commerce Department

Place: Chandigarh

Dated: September 29, 2014