

Sri Abhiram V Gauz
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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

INDEX

IN

REPLY TO

THE COMPLIANCE AFFIDAVIT

(Filed by YEIDA on 13.12.2022)

IN

Civil Misc. Writ Petition No.6049 of 2020

(Under Article 226 of the Constitution of India)

(District: Gautam Buddh Nagar)

M/s JAIPRAKASH ASSOCIATES LTD.

...Petitioner

Versus

State of Uttar Pradesh and another.

...Respondents

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(Rohan Gupta)

Advocate

Advt. Roll: A/R1316/12

82, Lawyers' Chamber,

High Court, Allahabad

Counsel for Petitioner

Mob. No. 9453010672

Dates: January, 2, 2023

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

**REPLY TO
THE COMPLIANCE AFFIDAVIT**
(Filed by YEIDA on 13.12.2022)

IN

Civil Misc. Writ Petition No.6049 of 2020

(Under Article 226 of the Constitution of India)

(District: Gautam Buddh Nagar)

M/s JAIPRAKASH ASSOCIATES LTD., being a company incorporated under the provisions of Companies Act, 1956 having its registered office at Sector 128, Noida-201304 Uttar Pradesh through its Authorized Signatory Mr. Manmohan Sibbal.

...PETITIONER

Versus

1. **STATE OF UTTAR PRADESH**, through Principal Secretary, Department of Industrial Development at UP Civil Secretariat
2. **YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY**, through its Chief Executive Officer, at First Floor, Commercial Complex, P-2, Sector-Omega 1, Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201308

...RESPONDENT NO.1

...RESPONDENT NO.2

Affidavit of Sri Krishna Kant Sharma,
aged about 50 years, son of Late Sri Hira
Lal Sharma, Occupation: Private Service,
Religion: Hindu, Authorised
Representative, M/s Jai Prakash
Associates Limited, Registered &
Corporate Office at Sector - 128, Noida -

201304, Gautam Budh Nagar. Aadhar No.
360301058050, Mob. No. 9958757549

(Deponent)

I, the Deponent named above, do hereby solemnly affirm and state on oath as under:

1. That the deponent has been authorized to present and file this reply affidavit for and on behalf of the Petitioner in the above captioned writ petition, and as such, he is fully acquainted with the facts deposed below.
2. That the instant affidavit is being filed in response to the affidavit of compliance dated 13.12.2022 ("*compliance affidavit*") filed by the Respondent No. 2. The said compliance affidavit has been filed by the Respondent No. 2 pursuant to the directions issued by this Hon'ble Court in the present Writ Petition vide interim orders dated 29.09.2022 and 09.11.2022. The instant reply affidavit is being filed by the Petitioner without prejudice to the challenge to the orders of the Respondent no. 2 impugned in the above captioned Writ Petition.
3. That on 09.11.2022, the petitioner has submitted a 'Composite Revised Settlement Proposal' dated 08.11.2022 ("*composite proposal*") to the Respondent No. 2 in continuation of its earlier letter dated 27.10.2022 and in line with the discussions

held with the Respondent no.2 on 02.11.2022. A Copy of the 'Composite Revised Settlement Proposal' dated 08.11.2022 alongwith its annexures is annexed hereto as **Annexure RA-1**.

4. That the Respondent no.2 has filed the compliance affidavit dated 13.12.2022 thereby placing on record the decision taken by the Board of the Respondent no.2 in its meeting held on 02.12.2022. The decision taken by the Board of the respondent no.2 have been detailed in paragraph 7A to 7J of the compliance affidavit dated 13.12.2022 and for sake of brevity the same are not being repeated herein.

5. That the decision taken by the board of the Respondent No.2 vide the minutes of the meeting dated 02.12.2022 as placed on record by the Respondent No. 2 is acceptable to the Petitioner, however, without prejudice to the following issues whereby the Respondent no.2 has acted in an illegal, discriminatory and arbitrary manner :
 - 5.1. The levy of restoration charges as a precondition for restoring the allotment of proportionate area of the subject land in dispute for its sale;
 - 5.2. Arbitrary imposition of the precondition of paying the no litigation incentive/additional compensation, for restoration of the subject land in dispute.
 - 5.3. Interest waiver to the tune of Rs. 87.66 crores for period of Covid 19 from 22.03.2020 to 30.09.2021 &the

excessive amount of Rs. 466,548, 489/- charged as penal interest over and above the applicable rate of interest under the allotment letters.

Apart from the aforesaid issues, the proposal of the Respondent No.2 as conveyed vide the compliance affidavit is acceptable to the Petitioner. However, to the aforesaid extent, the decision taken by the Board of the Respondent No.2 vide the minutes of the meeting dated 02.12.2022 as placed on record by the Respondent No. 2 vide its compliance affidavit is manifestly arbitrary, unfair and unreasonable.

6. That the Petitioner is not filing a para wise reply to the said compliance affidavit dated 13.12.2022 and denies the contents of the same unless specifically admitted herein below. No averment contained in the compliance affidavit dated 13.12.2022 shall be deemed to be admitted merely by reason of specific non-traverse.
7. That the decision of the Respondent No. 2 *ex facie* shows that it continues to violate the *status quo* granted by this Hon'ble Court vide order dated 25.02.2020. The Respondent No.2 violated the *status quo* by imposing, during the pendency of the writ petition, a completely new levy in the form of restoration charge (Rs. 425 Crores @ of 10% of prevailing

allotment rate) as a precondition for recomputing a rescheduling the outstanding dues of the Petitioner. The imposition of the new levy in the form of the restoration charge creates a new encumbrance on the land and clearly violates the *status quo*as directed by this Hon'ble Court. The Petitioner was constrained to amend its writ petition to challenge the said illegal restoration charge. However, the Respondent no. 2 continues to violate the *status quo* by persisting to demand the said illegal restoration charge as a precondition to withdraw the impugned cancellation order. Further, the Respondent No. 2 has taken a decision that it will restore the allotment only in the phased manner proportionate to the payment of the restoration charge.

8. That further, the Respondent No. 2 has also taken a decision of making the payment of additional compensation to the farmers (*though not a subject matter of the present writ petition*) before impugned cancellation order is withdrawn which is contrary to its decision for other builders where such additional compensation is being demanded at the time of applying for occupancy certificate. This action of the Respondent No.2 is *ex facie* discriminatory.
9. That it is submitted that the petitioner has filed a review petition before the Hon'ble Supreme Court bearing RA No. 18748 of 2022 thereby seeking a review of the judgment dated

19.05.2022 of the Hon'ble Supreme Court of India in *Yamuna Expressway Industrial Development Authority vs. Shakuntala Educaion and Welfare Society and Ors.* reported as 2022 SCC OnLine SC 655. Therefore, the submissions made *qua* the liability to pay the 'no-litigation incentive/additional compensation' to the erstwhile land owners is subject to the outcome of the said review petition.

10. That the Petitioner respectfully submits that in the event this Hon'ble Court decides to consider the issue of 'no-litigation incentive/additional compensation' to the farmers in the present writ petition, it is pertinent that the submissions of the Petitioner as regards to the rate, category of land on which such compensation is not payable and interest on such compensation are considered.

11. That in the light of the above the summary of the proposal submitted by the petitioner vide the composite proposal dated 08.11.2022 and the decision taken by the Respondent no.2 thereon, is being provided hereunder for the kind convenience of this Hon'ble Court:

S	Proposal submitted by the Petitioner vide the composite proposal dated 08.11.2022	Decision taken by respondent no.2's board in its meeting held on 02.11.2022 as stated in the compliance affidavit dated 13.12.2022	Remarks of the Petitioner

A Offer of the petitioner for clearance of all land dues and additional compensation		
Petitioner, in clearance of its dues has offered the following land:	i. That the proposed sale of land will have to be undertaken by the petitioner itself.	i. The petitioner is agreeable to the decision of the respondent no.2 whereby the petitioner has been directed to itself undertake the sale of land to clear the dues. Hence, settled.
i) Housing land 63.71 acres @ Rs.9.4 crores = Rs. 598.87 crores per acre (Rs.23140/- per Sq.mt. as per respondent no.2's office order dated 02.05.2022).	ii. To enable the sale of land, the Respondent Authority is agreeable to restore the lease in favor of the petitioner in a phased manner.	ii The Petitioner do not agree with the restoration of allotment in phased manner. The Petitioner seeks the restoration of <i>status quo ante</i> as it stood prior to the cancellation. Hence, not settled.
ii) Commercial / shopping land = Rs. 212.27 crores 11.41 acres @ Rs.18.6 crores per acre (Rs.46,000/- per Sq.mt. as per respondent no.2's office order dated 02.05.2022)	ii. However, the condition of payment of proportionate restoration charges has been imposed by the respondent no.2 for restoring the land for sale.	iii & iv The authority and jurisdiction of the respondent no.2 to impose and recover restoration charges is under challenge by way of the present writ petition. Therefore, the petitioner cannot be compelled to pay the illegal restoration charges at this stage. In all fairness the Respondent No. 2 should have withdrawn the levy of such restoration
Value of Total Land being offered = Rs.811.14 crores	v. The aforesaid will have to be paid by the Petitioner within 90 days. The Petitioner will also have to set up an escrow account with the Respondent Authority for payment of the outstanding amount.	
	v. That the entire dues calculated upto 30 November 2022 are hereby frozen and time upto 31 December 2023 is being granted to the Petitioner to deposit the said amount.	
	vi. That the amount calculated	

	<p>(excluding additional compensation for the sub-leased lands) upto 30.11.2022, as detailed by the respondent no.2, shall be taken as final and no discount/rebate of any type will be granted to the petitioner against this amount.</p>	<p>charges once the issue of cancellation is being settled in amicable manner. Hence, not settled.</p> <p>v. Petitioner is agreeable to freeze the interest on land due as on 30.11.2022. Hence, settled.</p> <p>vii. Petitioner is also agreeable to respondent no.2's proposal finality of the amounts for land premium and lease rents (excluding the penal interest) subject to the decision of the State Government as regards to the rate of interest. Hence, settled.</p>
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B Land Payments:

<p>The calculations of the amount due as on 30.09.2022 have been calculated after suitably considering the following:-</p> <p>i. Interest for the COVID period from</p>	<p>i. No consideration by respondent no.2 regarding waiver of interest for COVID period, rectification and reversal of over charged penal interest. It is</p>	<p>i. Since, the Respondent No. 2 has already granted such waiver on account of Covid 19 to other allottees therefore this</p>
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<p>22.03.2020 to 30.09.2021 may be waived off.</p> <p>ii. Rectification & reversal of over charged penal interest of Rs.466,548,489/- towards additional penal interest charged over & above as applicable in accordance terms of letters of allotment of land and resultantly revision of amount of half yearly re-scheduled installments.</p> <p>iii. Interest has been considered @ SBI MCLR w.e.f. 01.04.2016 as revised from time to time. This is in line with the decision of the 74th Board meeting of respondent no.2 taken on 24.08.2022.</p>	<p>presumed it has been accepted.</p> <p>ii. No comments by Respondent no. 2. It is presumed it has been accepted.</p> <p>ii. With respect to interest rate @ SBI MCLR, the Respondent no.2 observed that this issue was taken up in the 74th meeting of the Board of Respondent Authority and thereafter an offer of interest on MCLR rates to those allottees, to whom allotments have been made on SBI PLR Rates, was sent to the State Government, for their decision and decision of the Government is still awaited. Any further decision in this regard can be taken only after decision taken by Government has been received by the Respondent Authority.</p>	<p>issue is also settled in case accepted by Respondent no.2.</p> <hr/> <p>ii. Settled in case accepted by Respondent no. 2.</p> <p>iii. Settled</p>
<p>C <u>Payments with respect to 64.7% additional compensation to Farmers:</u></p>		

<p>(C-1) Re: Applicable rate.</p> <p>i. As per the decision taken in the 51st Board meeting of the Respondent no.2 held on 15-09-2014, the land of SDZ is to be charged @ Rs.517.60 per sq.mtr. However, while implementing the said decision taken in the 51st Board meeting, the Respondent no.2 has levied the rate of Rs. 699.50 per sqm and demanded an amount of Rs. 759,19,02,236/- against the total allotted land of 1085 hectare. This action is arbitrary. From other developers/allottees, the Respondent no.2 is charging the same rate as decided by the Respondent no.2's board in its 51st board meeting, however, it is only with respect to the petitioner that a different higher rate is being charged.</p> <p>ii. For land sub-leased by the petitioner, additional compensation be recovered from such sub-lessees.</p>	<p>i. The petitioner will deposit the proceeds from the sale of land which shall be adjusted first against the 64.7% additional compensation (no litigation incentive) payable to the farmers, which as on date, stands at Rs.714,37,20,836.00/- (principal amount) (Excluding sub-lease land).</p>	<p>i. Rate of Rs. 699.50 has been imposed contrary to the decision take in the 51st board meeting. Hence, not settled.</p> <p>ii. That the Respondent no.2 has agreed that the Sub-lessees of Petitioner are required to deposit 64.7% additional compensation (No Litigation Incentive) directly with the Respondent Authority. Hence, settled.</p>
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<p>(C-2) Land whereof possession has not been given to the petitioner, LMC Land and Abadi Land.</p> <p>i. Lease deed not executed - 19.66176 Hect. (possession not given to JAL): Though the above mentioned 19.66176 ha of land has been allotted to the petitioner, however, this particular land has not been leased to the petitioner and possession thereof has not been resumed by the petitioner. Therefore, it was prayed that additional compensation is not payable for this area of land.</p> <p>ii. LMC land (Gram sabha land) - 80.7803 Hect. resumed but not acquired from private landowners: Respondent no.2 has not paid and not to pay any additional compensation for the resumed land and the G.O. dated 29-08-2014 clearly states that the additional compensation is payable to the farmers whose land was acquired only and not LMC (Gramsabha land). The additional compensation is the no litigation incentive as per the G.O. dated 29-08-2014.</p>	<p>i. Respondent no.2 has declined this request without providing any reasons for the same.</p> <p>ii. Respondent no.2 has declined this request without providing any reasons for the same.</p> <p>iii. Respondent no.2 has declined this request without providing any reasons for the same.</p>	<p>i. It is arbitrary on the part of the Respondent No. 2 to demand payment of additional compensation of the land which is allotted but has not been leased to the Petitioner yet. However as this land shall be ultimately leased to Petitioner. Hence it is accepted.</p> <p>iii. The payment of additional compensation on the land which has not been acquired but was government land does not arise. Hence, not settled.</p>
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<p>ii. Abadi Land :Respondent no.2 has already started allotting plots to the erstwhile land owners whose land was acquired for SDZ project, after payment of land payments, development charges, service connection charges etc. Therefore, the liability to pay additional compensation for this land is on such new allottees of the Respondent no.2. Moreover, since this land is being offered back to the erstwhile land owners, therefore, no additional compensation is to be paid.</p>		<p>iii. The payment of additional compensation for the developed land being reallocated to farmers does not arise. Hence, not settled.</p>
<p>(C-3) Interest on payment of additional compensation:</p> <p>Interest on additional compensation is being illegally recovered by the respondent no.2 since the same was not provided in the GO dated 29.08.2014 or in the judgment dated 29.08.2014 passed by the Hon'ble Supreme Court of India. Such interest is not being provided to the erstwhile landowner. Since additional compensation is yet to be paid by the Respondent no.2 to the erstwhile landowners,</p>	<p>That the Petitioner shall be bound to deposit interest payable on the outstanding premium, lease rent and 64.7% additional compensation (No Litigation Incentive) and the same must be deposited by 31 December 2023.</p>	<p>There is no provision of payment of interest on additional compensation. Further, there being no fixed date for providing the compensation no interest can be provided. The additional compensation being an incentive and not a vested right, no interest is payable. Hence,</p>

therefore, it cannot recover interest thereon from the petitioner.		not settled.
D Offer for settling the grievances of the Homebuyers:		
The petitioner has submitted that it is capable of delivering possession of the 07 number of group housing projects launched on the subject land in dispute within the time periods specified in the said composite proposal dated 08.11.2022. Further, the petitioner has submitted detailed timelines and cash flow for executing the said projects. Pertinently, the petitioner had proposed to spend Rs. 160 crores in the manner of Rs. 25 crores every quarter in the manner as provided in the said composite proposal dated 08.11.2022.	Not considered by the Respondent no.2	Presumed to be accepted by the Respondent no.2, therefore, settled as far as Respondent no.2 is concerned.

12. That as can be observed from the table the Petitioner has endeavored to address all matters pertaining to outstanding dues, farmers compensation, construction of homes etc. in a pragmatic and transparent manner relying on the belief that illegal cancellation of the allotment of land by the Respondent No. 2 shall be set aside and after witnessing the compliance of the Hon'ble Court's Orders by the Petitioner by depositing Rs. 200 Crores the status quo ante shall be restored as then only

the works suspended from February 2020 can resume and the construction can be done by the Petitioner.

13. That thus, from the table above it can be seen that most of the issues are settled/capable of being settled except two issues: (1) the levy of restoration charges (2) the rate, category of land and interest on no litigation incentive/additional compensation including its manner of recovery (3) the levy of excessive penal interest over and above the applicable penal interest imposed by the Respondent No.2 and Waiver of interest for COVID period from 22.3.2020 to 30.09.2021.

14. That the petitioner's objections are being summarized hereunder:

14.1. The levy of restoration charges is *mala fide*, illegal, arbitrary and without any authority and jurisdiction and amounts to over-reaching the orders passed by this Hon'ble Court.

14.2. The action of the Respondent No.2 whereby it has illegally imposed the pre-condition of paying no litigation incentive/additional compensation for restoring the allotment of the subject land in dispute is manifestly illegal and discriminatory.

14.3. The rate levied by the Respondent no.2 for recovering the no litigation incentive/additional compensation vide its letter dated 15.12.2014 @ Rs. 699.50 per sqm is illegal

and contrary to the decision taken by the board of the Respondent no.2 in its 51st meeting whereby the board of the Respondent no.2 had taken a conscious decision to levy the rate of @Rs. 517.60 per sqm, which is exactly 64.7% of Rs 800/- per sqm actually paid to the farmers whose land was acquired by Respondent no 2.

14.4. The Petitioner has further sought waiver of interest during COVID period from 22.3.2020 to 30.09.2021, however, the same has not been considered by the Respondent no.2 without appreciating the adverse effect of the pandemic on the business of the Petitioner. Whereas, the Respondent no.2 is extending similar benefits to other allottees. Similarly, the Petitioner had also sought waiver of the excessive penal interest over and above the applicable penal interest imposed by the Respondent No.2 as being excessive and arbitrary.

15. That before proceeding to elaborate on the aforesaid objections to the decision taken by the Respondent no.2 in its board meeting held on 02.12.2022, it is necessary to summarize and place on record the following facts and circumstances before this Hon'ble Court:

15.1. That till date, the petitioner has paid an amount of Rs. 2501.99 crores to the respondent no.2 towards the premium amount in terms of the subject allotment letters

and lease deeds including interest and/or penal interest charged by the respondent no.2 from time to time.

15.2. The aforesaid amount of Rs. 2501.99 crores has been paid till date against the original premium amount of Rs. 1659.25 crores. The excess payment is on account of the high rate of interest being charged by the respondent no.2 ranging from 16% to 20%. As such the total amount outstanding as on 30.11.2022 is Rs. 853.89 crores, calculated at prevailing SBI PLR and 3% penalty for delayed payments (*principal amount + interest excluding the penal interest over and above the applicable penal interest of 3%, additional compensation and/or restoration charges being illegally levied by the respondent no.2*). Calculation of this amount is as under:

- i) Amount due as detailed in supplementary affidavit of February, 2022, Rejoinder Affidavit of March, 2022 and Third Supplementary Affidavit of September, 2022 : Rs. 889.67 crores
- ii) Interest during the period from 01.04.2022 to 30.11.2022 : Rs. 64.22 crores.
- iii) Amount paid by the petitioner to respondent no.2 in terms of order dated 29.09.2022: Rs. 100 crores.
- iv) Amount due as on 30.11.2022: Rs 853.89 crores.

(Note: The aforesaid calculations are net of additional penal interest of Rs 46.65 crores illegally charged by

Respondent no 2.) A copy of the statement containing details of payment to the tune of Rs.2501.99 crores is annexed hereto as **Annexure RA- 2.**

A copy of the statement containing details of total amount outstanding @ Rs. 853.89 crores (calculated at prevailing SBI PLR and 3% penalty for delayed payments) is annexed hereto as **Annexure RA- 3.**

15.3. In the decision taken vide the meeting held on 02.12.2022, the Respondent no 2 has not considered the waiver of interest during COVID period from 22.3.2020 to 30.09.2021 as claimed by the petitioner vide the composite proposal dated 8.11.2022.

15.4. Since COVID was undeniably a global catastrophe which affected all sectors including the real estate sector, therefore, this claim of the petitioner ought to have been accepted by the Respondent no.2. It is therefore prayed that silence of the Respondent no.2 in the compliance affidavit dated 13.12.2022 as well as the decision taken by the Respondent no.2's board on 02.12.2022 may be held against the Respondent no.2 and it may be deemed that the Respondent no.2 has accepted the said proposal. Resultantly, the Land dues of Rs 853.89 crores as on 30.11.2022 will further reduce by Rs. 87.66 crores to Rs 766.23 crores.

15.5. Further, the proposal regarding calculation of interest @ SBI MCLR has been approved in the 74th Board meeting of the respondent no.2 held on 24.08.2022 and the matter has been referred for the approval of the respondent no.1 on 15.09.2022. In case the interest is calculated @ SBI MCLR, the Land dues amount of Rs 853.89 / 766.23crores will further reduce by Rs 346.61 crores and will come to Rs. 507.28 / 420.87 crores. A copy of the statement showing the calculation of the total outstanding due of Rs 853.89 / 766.23 crores calculated @ SBI PLR is annexed hereto as **Annexure RA- 4** and **Annexure RA- 5**. A copy of the statement showing total outstanding of Rs 507.28 crores calculated @ SBI MCLR is annexed hereto as **Annexure RA- 6**. A Copy of the minutes of the 74th board meeting of the respondent no.2 held on 24.08.2022 is annexed hereto and marked as **Annexure RA- 7**.

15.6. It is further submitted that as on 31.07.2017, the petitioner has paid an amount of Rs. 195,72,85,646/- towards Lease Rent, details of which are given in the petitioner's letter dt 08.12.2017 to Respondent no 2. As such the total amount outstanding against Lease Rent as on 30.11.2022 is Rs. 177,86,24,828/- crores calculated at prevailing SBI PLR and 3% penalty for delayed payments. This amount of Rs 177,86,24,828/- crores will further reduce to Rs 507.28 crores of land dues and Rs 158.13

crores of lease rent, in case the interest is calculated @ SBI MCLR the proposal for which has been approved in the 74th Board meeting of the Respondent no 2 and has been referred to Respondent no.1 for approval. A copy of letter dated 08.12.2017 is annexed hereto as **Annexure RA- 8**. A copy of the statement showing the details of outstanding lease rent of Rs 177.86 crores as on 30.11.2022 calculated at prevailing SBI PLR is annexed hereto as **Annexure RA- 9** and a copy of the statement showing the details of outstanding lease rent of Rs 158.13 crores as on 30.11.2022 calculated at prevailing SBI MCLR is annexed hereto as **Annexure RA- 10**.

A. The levy of restoration charges is mala fide, illegal, arbitrary and without any authority and jurisdiction and amounts to overreaching the orders passed by this Hon'ble Court.

16. That it is submitted that the petitioner has amended the above captioned writ petition thereby also challenging the levy of restoration charges. The petitioner relies upon the contents of the said amended writ petition and prays that the same may kindly be read as reproduced.
17. That since the validity of restoration charges is *sub-judice* in the above captioned writ petition, imposing payment thereof as a pre-condition for restoring the allotment for sale of land for clearing the outstanding dues, smacks of *mala fide* and has the effect of rendering the present writ petition infructuous.

Further, the condition of levy of the restoration charges is in teeth of the interim orders passed by this Hon'ble Court on 08.02.2021 as corrected vide the interim order dated 01.03.2021.

18. That vide interim order dated 25.02.2020, this Hon'ble Court *inter alia* directed the petitioner to make a payment of Rs. 100 Crores to the respondent no.2 in two installments of Rs. 50 Crores each payable by 10.03.2020 and 25.03.2020. Pursuant thereto, the petitioner made payment of Rs. 50 Crores by 09.03.2020 and payment of Rs. 5 Crores by 16.03.2020.
19. That thereafter, an application bearing *Civil Misc Application No. 19 of 2020* was preferred seeking extension of time to make the balance payment of Rs. 45 Crores in view of the Covid-19 pandemic and other reasons detailed in the said application. Pertinently, the respondent no.2, on account of delay, sought interest on this balance amount of Rs. 45 Crores and demanded an amount of Rs. 52,50,26,551/- from the petitioner. Vide interim order dated 08.02.2021 r/w the interim order dated 01.03.2021, the said application bearing *Civil Misc Application No. 19 of 2020* was allowed by this Hon'ble Court and further one week time was granted to the petitioner to payment to the tune of Rs. 52,50,26,551/-.The respondent no.2 was directed to consider the petitioner's application for 'restructuring and recomputing' the dues of

the petitioner. No other condition, save and except the condition of payment of Rs. 52,50,26,551/-, was imposed by this Hon'ble Court for considering the petitioner's application for 'restructuring and recomputing' the outstanding dues. Relevant direction contained in the interim order dated 08.02.2021 as corrected vide the interim order dated 01.03.2021 is reproduced herein below:

In the above conspectus, the petitioner company is directed to deposit Rs. 52,50,26,551/- within a week from today with the respondent no.2. It is further directed that after deposit of the aforesaid amount, in case the petitioner moves an application for restructuring and recomputing the dues payable by the petitioner, the same shall be considered by the respondent authority in accordance with law, after giving opportunity of hearing.

[Emphasis Supplied]

20. That the interim orders dated 08.02.2021 and 01.03.2021 were not challenged by the respondent no.2 and the petitioner duly deposited the entire amount of Rs. 52,50,26,551/- on 12.02.2021, as directed by this Hon'ble Court. This amount was accepted by the respondent no.2 without any *demur*. Despite having accepted the aforesaid payments, the respondent no.2 has overreached the directions of this Hon'ble Court and imposed the condition of payment of restoration charges for considering the petitioner's application for re-schedulement and restructuring of the balance dues in clear breach of the directions issued vide the interim orders dated 08.02.2021 and 01.03.2021.

21. That the reference may be made to the minutes of the meeting of the board of the Respondent no.2 held on 28.06.2021 whereby the restoration charges have been levied as a pre-condition for considering the petitioner's application for restructuring and re-computing the outstanding dues which was submitted by the petitioner in compliance of the interim orders dated 08.02.2021 and 01.03.2021 passed by this Hon'ble Court. When no such condition of payment of restoration charges or any other amount in excess of Rs. 52,50,26,551/-, was imposed by this Hon'ble Court, it was not open for the Respondent no.2 to over reach the orders of this Hon'ble Court by imposing the condition of payment of restoration charges before complying with the said orders.
22. That it is further submitted that on 29.09.2022, the Respondent no.2 submitted before this Hon'ble Court that subject to payment of Rs.100 Crores, it would consider the petitioner's proposal for settlement. Subsequent thereto, the petitioner deposited the aforesaid sum of Rs. 100 Crores with the Respondent no.2. It is evident from the contents of the compliance affidavit dated 13.12.2022 filed by the Respondent no.2, that the proposal of the petitioner for clearing the dues of the Respondent no.2 has been accepted subject to certain modification(s) (*instead of accepting land, the respondent no.2 wants the petitioner to sell the land and make payments from the proceeds of such sale*). However, to the utter shock of the

petitioner, now the Respondent no.2 has imposed the pre-condition of payment of restoration charges to restore the land for sale. Thus, the Respondent no.2 is adamant on derailing all attempts by the petitioner to clear its outstanding dues. This action of the Respondent no.2 smacks of *mala fide* and has the effect of frustrating all efforts of the petitioner to pay its dues.

23. That the decision of the Respondent no.2's board in the meeting held on 02.12.2022 is very peculiar. The petitioner vide the composite proposal dated 08.11.2022 offered to surrender land in favor of the respondent no.2 in order to settle its dues. However, with the *mala fide* intent of imposing the illegal and arbitrary restoration charges and rendering the present writ petition as infructuous, the respondent no.2 has on one hand rejected the petitioner's offer for land and on the other hand has directed the petitioner to sell the required portions of the subject land in dispute.

Naturally, in order for the petitioner to sell the subject land, the respondent no.2 would have to restore the allotment thereof in favor of the petitioner. However, the Respondent no.2, while acting like a profit oriented private entity, has imposed an unreasonable condition that the allotment of even portion of the subject land for sale shall only be made after payment of restoration charges. In paragraphs 10 to 12 of the judgment of the Hon'ble Supreme Court of India in *Style (Dress Land) vs Union Territory, Chandigarh and anr.* reported

as (1999) 7 SCC 89, it was held that in contractual matters, state cannot act like private individuals by imposing conditions solely with the object of extracting profits from its lessees. The state ought to act in a reasonable manner while obeying the discipline of Article 14 of the Constitution of India.

24. That the Respondent no.2 is imposing restoration charges @ 10% of the prevailing market value of the 'entire allotted land' as a charge on account of '*restoring the allotment of land to the petitioner*'. It is evident from the minutes of the meeting of the board of the Respondent no.2 held on 28.06.2021, that the restoration charges and the levy thereof have been determined by the board itself in the said meeting as a pre-condition for restoring the allotment of the land.

25. That there is no provision in the Uttar Pradesh Industrial Development Act, 1976 [for short "1976 Act"] which empowers the respondent no.2 to levy '*restoration charges*' in lieu of restoring the allotment of land to an allottee. The restoration charges are neither traceable to section 11 or to section 13 of the 1976 Act since it is neither a '*tax or levy*'(section 11) being imposed by the Respondent no.2 for '*providing, maintaining or continuing any amenities*' in the industrial development area nor a penalty (section 13) being recovered by the Respondent no.2 on account of the '*outstanding arrears*'. As stated hereinabove, restoration charges are being levied solely for

'restoring' the allotment of the subject land in favor of the petitioner. It is submitted that the Respondent no.2, pursuant to cancellation of the allotment of the subject land in dispute, has not re-allotted the same to any other entity. In fact, the interim order dated 25.02.2020 directing the parties to maintain status quo is still in operation. Therefore, there is no expenditure which the Respondent no.2 would have to incur in order to restore the subject land in dispute. Thus, this levy of restoration charges is completely illogical, arbitrary and a result of the whims and fancies of the Respondent no.2.

26. That it is settled law that in fiscal matters involving compulsory extraction of money from its subjects, state cannot impose any fee, levy or penalty by whatever name called or referred, unless the power to impose such fee, levy or penalty has been expressly conferred by the statute. Such conferment of power must manifest itself in clear and unambiguous words used by the legislature and the power ought to be granted in express terms and in the event of any ambiguity or doubt in the language used, the language used has to be interpreted against the state [please see *CIT vs Vatika Township Pvt. Ltd.* (2015) 1 SCC 1, para 41 and *Federation of Indian Mineral Industries and ors vs. Union of India and anr.* (2017) 16 SCC 186, para 26]. Therefore, the levy of 'restoration charges' in the present case is *ultra vires* the 1976 Act and violative of Articles 14 and 265 of the Constitution of India.

27. That assuming for sake of arguments, without conceding, that the Respondent no.2 is empowered under the 1976 Act to levy restoration charges, it is submitted that in the absence of rules framed by the respondent no.1 under section 18 of the 1976 Act or by the Respondent no.2 under section 19 of the 1976 Act, the levy of restoration charges to the tune of 10% of the prevailing market value of the entire allotted land is illegal and arbitrary being violative of Article 14, 19 and 265 of the Constitution of India. There cannot be a levy without there being a mechanism providing the manner in which the levy has to be quantified, imposed and recovered. In the present case, the quantum of restoration charges @ 10% of total allotment value is exorbitant and there is absolutely no basis for quantifying these charges at such rate. [Please see *Consumer Online Foundation and Ors. vs. Union of India and Ors - (2011) 5 SCC 360, para 25-27; Commissioner, Central Excise and Customs, Kerala v. Larsen and Toubro (2016) 1 SCC 170, para 33 and 41*].
28. That assuming for sake of arguments, without conceding, that the Respondent no.2 is empowered to levy 'restoration charges', however, the quantification of the restoration charges at 10% of prevailing allotment rate is highly excessive, illegal and arbitrary. It is submitted that such quantification has no logical basis. This excessive rate is being levied solely at the whims and fancies of the Respondent no.2, which is acting like

a profit motivated private entity. Therefore, this action of the Respondent No.2 deserves to be set-aside also on this ground.

B. The rate levied by the Respondent no.2 for recovering the no litigation incentive/additional compensation vide its letter dated 15.12.2014 @ Rs. 699.50 per sqm is illegal and contrary to the decision taken by its board in its 51st meeting whereby a conscious decision to levy the rate of @517.60 sqm was taken.

29. That by way of the composite proposal dated 08.11.2022, the petitioner had *inter alia* submitted that the respondent no.2, in its 51st board meeting held on 15.09.2014 had taken a conscious decision to collect no litigation incentive/additional compensation @Rs. 517.60 per sqm from the petitioner. Similarly, it was decided that compensation @ 545.79 per sqm be charged from M/s Jaypee Infratech Ltd. (*a wholly owned subsidiary of the petitioner which is now undergoing corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016*). Relevant table from the minutes of the 51st meeting of the Respondent no.2's board held on 15.09.2014 is extracted herein below for the kind convenience of this Hon'ble Court:

क्रम सं०	विवरण	आरोपित होने वाली धनराशि (रूपये प्रति वर्गमीटर)
1.	मै० जे०पी० एस०आई० (एस०डी०जैड०, गौतमबुद्धनगर)	517.60
2.	मै० जेपी इन्फॉटेक लि० को हस्तांतरित अन्य भूमि (गौतमबुद्धनगर) एल.एफ.डी., फैंसिलिटीज आदि	545.79
3.	मै० जेपी इन्फॉटेक लि० को हस्तांतरित भूमि (अन्य जनपद)	253.50
4.	आवासीय टाउनशिप भूखण्ड / ग्रुप हाउसिंग	1770

5.	25 से 250 एकड के भूखण्डों की संस्थागत योजना	600
6.	आवासीय भूखण्ड योजना 2009	1330
7.	संस्थागत भूखण्ड (ऑफिसिस) 2010 - 11	600
8.	मिश्रित भू-उपयोग	600
9.	औद्योगिक	550

A copy of the minutes of the 51st meeting of the respondent no.2's board is annexed hereto as **Annexure RA- 11**.

30. That it is submitted that the aforesaid rate of Rs. 517.60 sqm is exactly 64.7 % of Rs. 800 per sqm, which is the rate at which compensation was paid to the erstwhile landowners. The policy decision taken by the respondents herein provides for payment of compensation @ 64.7% of the amount of premium already paid to the erstwhile landowners. However, the Respondent no.2 vide its letter dated 15.12.2014, while implementing the decision taken by its board in its 51st meeting qua the petitioner, has arbitrarily imposed the rate of

Rs. 699.50 per sqm contrary to the decision taken by the board in the said 51st meeting.

31. That there cannot be any dispute that the Respondent no.2's board in its 51st meeting had taken a conscious decision to impose the rate of Rs. 517.60 per sqm on the petitioner. However, while on one hand the aforesaid letter dated 15.12.2014 relies upon the decision taken by in the 51st meeting (*since the letter dated 15.12.2014 makes repeated reference to the decision taken in the 51st meeting*), on the other hand a rate of Rs. 699.50 per sqm has been imposed instead of Rs. 517.60 per sqm which was decided in the 51st meeting. This clearly establishes that the Respondent no.2 has acted in a very arbitrarily and discriminatory manner and has violated the decision taken by its board in the 51st meeting. Relevant extract of the letter dated 15.12.2014 is reproduced hereunder for the kind convenience of this Hon'ble Court:

आदेश से प्राप्त निर्देशों के रूप में प्राधिकरण की 51वीं बैठक में प्रस्ताव प्रस्तुत किया गया जिसमें प्लॉट/सेक्टर/ब्लॉक योजना को अर्थात् अतिरिक्त प्राधिकरण के व्यवहार की प्रतिकृति से अर्थात् इस के अतिरिक्त से 699.50 / प्रति वर्गमीटर जतिरेकत देय के रूप में निर्देश जारी किया गया।

प्राधिकरण की 51वीं बैठक से लिये गये निर्देश के अन्वय पर अतिरिक्त प्राधिकरण की अर्थात् अतिरिक्त प्राधिकरण देय होगा।

Plot Area:	1085.3327 Hct (10853327 Sqm.)
Rate:	Rs. 699.50/Sqm
Rate/Arrears:	Rs. 7,597,902,236.5
Date of Issue Letter:	15.12.2014
Authority/Devt. Dept. Bank Name:	Bank of Baroda, First Floor, Commercial Complex, Block-P-2, Sector-5, Indraprastha, Gurgaon, Haryana, District G.B. Nagar

A copy of the letter dated 15.12.2014 is annexed hereto as **Annexure RA- 12.**

32. That it is submitted that the other entities/allottees, who are mentioned in the table extracted hereto before from the minutes of the Respondent no.2's 51st board meeting, are being charged the same rates as mentioned against their respective names in the said table. For instance, for Jaypee Infratech Ltd., the Respondent no.2 vide its letter dated 20.01.2015 is imposing the rate of Rs. 545.79 per sqm for land situated in district Gautam Buddha Nagar and Rs. 253.50 per sqm for land situated in other areas. This is the rate which was decided by the board of the Respondent no.2 for said Jaypee Infratech Ltd. in its 51st meeting. Relevant extract of the letter dated 20.01.2015 is reproduced herein below for convenience sake:

जयपेठ गौतमबुद्धनगर में हस्तांतरित भूमि के सापेक्ष 545.79 रुपये प्रति वर्गमीटर तथा अन्य जगहों में हस्तांतरित भूमि के सापेक्ष 253.50 रुपये प्रति वर्गमीटर की दर से धनराशि कंसेशनायर से जमा कराया जाने का निर्णय प्राधिकरण बोर्ड द्वारा लिया गया है।

उक्त के क्रम में निम्नानुसार धनराशि जमा करायी जानी है -

1. जयपेठ गौतमबुद्धनगर में हस्तांतरित भूमि के सापेक्ष -	20000261692
2. अन्य जगहों में हस्तांतरित भूमि के सापेक्ष -	5917570405
योग -	25917832097

A copy of the letter dated 20.01.2015 is annexed hereto as **Annexure RA- 13.**

33. That even with respect to the other allottees mentioned in the table extracted hereto before from the minutes of the

Respondent no.2's 51st board meeting, the Respondent no.2 is charging the same rate which was decided by the board. This is evident from the office order dated YEA/Fin/201/2014 dated 20.10.2014 issued by the respondent no.2. It is only with respect to the petitioner that the Respondent no.2 has adopted a different yardstick and imposed a higher rate than what was decided in the 51st meeting. Relevant extract of the office order dated dated20.10.2014 is reproduced hereunder for convenience sake:

क्रम सं०	विवरण	आरोपित होने वाली धनराशि (रुपये प्रति वर्गमीटर)
1.	मै० जे०पी० एस०आई० (एस०डी०जै०ड०, गौतमबुद्धनगर)	699.50
2.	मै० जे०पी० इन्फॉटेक लि० को हस्तांतरित अन्य भूमि एल.एफ.डी., फैंसिलिटीज आदि (जनपद गौतमबुद्धनगर)	545.79
3.	मै० जे०पी० इन्फॉटेक लि० को हस्तांतरित भूमि (अन्य जनपद)	253.50
4.	आवासीय टाउनशिप भूखण्ड / ग्रुप हाउसिंग	1770.00
5.	25 से 250 एकड़ के भूखण्डों की संस्थागत योजना	600.00
6.	आवासीय भूखण्ड योजना 2009	1330.00
7.	संस्थागत भूखण्ड (ऑफिसिस) 2010 - 11	600.00
8.	मिश्रित भू-उपयोग	600.00
9.	औद्योगिक	550.00

A copy of the office order dated 20.10.2014 is annexed hereto and marked as **Annexure RA- 14**.

The facts and circumstances narrated hereinabove clearly demonstrate the arbitrary and discriminatory action on the part of the respondent no.2 whereby it has adopted a pick and

choose policy against the petitioner thereby arbitrarily imposing a higher rate of Rs. 699.50 per sqm in clear breach of the decision taken in the 51st meeting by the respondent no.2's board. While the respondent no.2 is charging the other allottees the rate determined by its board in the same 51st meeting under the same agenda no. 51/04. Thus, the action of the respondent no.2 is clearly violative of Article 14 of the Constitution of India.

34. That the arbitrary and discriminatory action of the respondent no.2 further gets compounded by the fact that for other allottees such as M/s Gaursons Realtech Pvt Ltd, the Respondent no.2 vide order dated 14.10.2020, has directed that no litigation incentive/additional compensation shall only be payable at the time of occupation certificate. However, in the present case the petitioner is being made to pay the same before payment of its other land dues since the decision taken by Respondent no.2's board vide its meeting held on 02.12.2022 stipulates that proceeds from sale of land shall be first adjusted against the demand on account of no litigation incentive / additional compensation. A copy of the order dated 14.10.2020 issued by the Respondent no.2 thereby directing that no litigation incentive/additional compensation shall be payable at the time of applying for occupation certification is annexed hereto as **Annexure RA- 15**.

C. The respondent no.2 cannot impose no litigation incentive/additional compensation for LMC land and Abadi Land

(C-1) LMC land:

35. That the LMC land (80.7803 ha) i.e. the gram sabha¹ and which was resumed by the Respondent No. 1, however, the same was not acquired by the Respondent no.2 from the private land owners. This land vested in the government/gram sabha and therefore was not acquired from the farmers/private land owners. Since the no litigation incentive/additional compensation is aimed towards compensating the erstwhile landowners in lieu of their land being acquired, therefore, there is no question of paying any no litigation incentive/additional compensation towards resumption of such LMC land.

(C-2) Abadi Land:

36. That it is submitted that the Respondent no.2 has already started allotting Abadi land (99.9320 Ha in the present case) to the displaced landowners and for said allotment, the Respondent no.2 is charging the consideration for such land, development fees, service connection charges etc. This is being charged by the Respondent no.2 in addition to the acquisition cost from the Respondent herein. Further, the petitioner is not a beneficiary of the Abadi Land and this land is allotted by the Respondent no.2 in discharge of its obligations. In view thereof, it is submitted that no litigation incentive/additional compensation is not payable by the petitioner *qua* the Abadi

Land. A copy of two Abadi allotment letters issued by the Respondent no.2 is annexed hereto **Annexure RA - 16.**

37. That a brief tabular representation of the calculations pertaining to the LMC land, Abadi land and 19.66176 Ha land is being provided hereunder :

S	Particulars	Area in Hect.	Compensation @699.50	Compensation @517.60
1	LMC land	80.7803	56,50,58,198	41,81,18,833
2	Abadi land	99.9320	69,90,24,340	51,72,48,032
3	Total:	180.7123	126,40,82,539	93,53,66,865

38. That the Respondent no 2 has on one hand accepted the proposal of the Petitioner with regard to the recovery of 64.7% no litigation incentive / additional compensation from the sub lessees/ Developers of subleased Group Housing/Commercial plots by the Respondent No 2 on its own but on the other hand Petitioner's proposal of recovery of same from sub lessees of residential plot owners has not been accepted.

39. That considering above the total no litigation incentive/ additional compensation to be paid to the Respondent no 2 works out as below:

i) Total demand By YEIDA = Rs 759.19 crores (A)

ii) Less because of effect of rate charged from @ Rs 699.50 to Rs 517.60 per sq meter of 1085.3327 Hect = Rs 197.44 crores (B)

iii) Less demand on account of LMC/Abadi = Rs 93.53 crores (C)

iv) Less to be recovered from Sub lessees of GH, Commercial & Residential plots = Rs 116.84 crores (D)

v) Net amount payable by the petitioner on account of no-litigation incentive/additional compensation (subject to the outcome of the Review Petition in the Hon'ble Supreme Court of India) = Rs 351.58 crores [A- (B+C+D)]

40. That considering all above the overall total dues as on 30.11.2022 are detailed below:-

i. Land dues = Rs 766.23 crores

ii. Lease Rent = Rs 177.86 crores

(Both above figures are exclusive of interest during COVID period and any additional penal interest illegally imposed by YEIDA and it will further reduce to Rs 507.28 crores of land dues and Rs 158.13 crores of lease rent, in case interest is calculated @ SBI MCLR, the case of which has been approved in the 74th Board meeting of Respondent no 2 and the matter has been referred for the approval of Respondent no 1)

iii. Additional Compensation for farmers (without any interest) = Rs 351.58 crores

iv. Total payable (i+ii+iii) = Rs 1295.67 crores (it will further reduce to Rs 1016.99 crores of, in case interest is

calculated @ SBI MCLR; the case of which has been approved in the 74th Board meeting of Respondent no 2 and the matter has been referred for the approval of Respondent no 1)

(D)The recovery of interest on no litigation incentive/additional compensation is illegal and arbitrary.

41. That the very outset it is submitted that to the best of the knowledge of the petitioner, the Respondent no.2 has not disbursed the additional compensation/ no litigation expenses to the erstwhile landowners by the respondent no.2 for the subject land in dispute.
42. That it is settled law that interest has to be paid when either there is a vested right or by virtue of law or by an order of a competent court of law. In the present case, the Respondent no.2 has decided to give additional compensation at its own volition as a no-litigation incentive. The Respondent no.2 has not committed any particular date on which the additional compensation/ no litigation incentive is to be paid to the beneficiaries. Therefore, the additional compensation/ no litigation incentive is to be paid as and when received by the Respondent no.2.
43. That it is submitted that the payment of interest on additional compensation/no litigation expenses was not ordered in

judgment dated 19.05.2022 of the Hon'ble Supreme Court of India in *Yamuna Expressway Industrial Development Authority vs. Shakuntala Education and Welfare Society and Ors* reported as 2022 SCC OnLine SC 655 wherein the demand for no litigation incentive/additional compensation was upheld. Therefore, demand for interest on additional compensation is completely illegal.

44. That it is submitted that even the Respondent no.2's board in its 51st meeting has not directed payment of any interest on no litigation incentive/additional compensation. Therefore, in view of the aforesaid facts and circumstances and since the Respondent no.2 has not yet paid the no litigation incentive/additional compensation to the erstwhile land owners, the demand for interest thereon is highly unjustified and arbitrary.

45. That at this stage, it is pertinent to highlight the following factual aspects behind the no litigation incentive/additional compensation:

45.1. A Full Bench of this Hon'ble Court vide its judgment dated 21.10.2011 titled *Gajraj Singh vs State of Uttar Pradesh* reported as (2011) ADJ 1 (FB) disposed of a batch of writ petitions filed challenging the acquisitions made by New Okhla Industrial Development Authority thereby *inter*

alia ordering the payment of additional compensation / no-litigation incentive to the aggrieved erstwhile landowners. This judgment was subsequently upheld by the Hon'ble Supreme Court in *Savitri Devi vs. State of U.P.* reported as (2015) 7 SCC 21. Neither the Hon'ble Supreme Court nor this Hon'ble Court directed any interest on delayed payment to be recovered from the allottees.

45.2. The respondent no.1 vide GO dated 03.09.2013 constituted the Chaudhary Committee for looking into the grievances of the erstwhile landowners in the acquisition proceedings undertaken by the Respondent no.2. This included whether no litigation incentive/additional compensation ought to be paid to the landowners in the Respondent no.2's acquisition on the analogy of the directions issued by this Hon'ble Court in *Gajraj Singh's case (supra)*. A Copy of GO dated 03.09.2013 is annexed hereto as **Annexure RA-17**.

45.3. The Chaudhary Committee vide its report dated 03.09.2013 *inter alia* recommended payment of no litigation incentive/additional compensation. Pertinently, even this report dated 03.09.2013 did not specify the recovery of interest from the allottees. Since the very inception of the controversy *qua* payment of no litigation incentive / additional compensation, the petitioner has always opposed

the said demand. A Copy of the Chaudhary Committee report is annexed hereto as **Annexure RA-18.**

45.4. The Respondent no.1 vide GO dated 29.08.2014 approved the recommendations of the Chaudhary Committee and this decision was approved and implemented by the Respondent no.2 in its 51st meeting held on 15.09.2014. A Copy of the GO dated 29.08.2014 is annexed hereto as **Annexure RA-19.**

45.5. Thereafter, the Respondent no.2 vide its letter dated 15.12.2014, in terms of the GO dated 29.08.2014 and the decision taken by respondent no.2 in its 51st meeting, demanded payment of no litigation incentive/additional compensation. Pertinently, this letter dated 15.12.2014 (*Annexure RA-11 hereto before*) provided that failure to pay additional compensation shall entail **levy of penal interest.**

45.6. The aforesaid culminated into the petitioner challenging the demand for additional compensation by filing a WRIT-C No. 40702 of 2017 wherein vide order dated 05.09.2017 an interim stay of the demand on account of additional compensation was granted. A Copy of the interim stay order dated 05.09.2017 in WRIT-C No. 40702 of 2017 is annexed hereto as **Annexure RA-20.**

45.7. The aforesaid WRIT-C No. 40702 of 2017 was allowed by this Hon'ble Court vide the Judgment and Order dated 28.05.2020 and the demand for additional compensation was quashed and set-aside. Appeal against the Judgment and Order dated 28.05.2020 was allowed by the Hon'ble Supreme Court vide the judgment dated 19.05.2022 titled *Yamuna Expressway Industrial Development Authority vs. Shakuntala Education and Welfare Society and Ors* reported as 2022 SCC OnLine SC 655. It is pertinent to plead and submit here that the final judgment and order dated 28.05.2020 passed by this Hon'ble Court in WRIT-C No. 40702 of 2017 was never stayed by the Hon'ble Supreme Court till pronouncement of the final judgment dated 19.05.2022.

46. That in the aforesaid backdrop, it is submitted that:

46.1. The grant of no litigation incentive/additional compensation to the erstwhile landowners was taken pursuant to a policy decision of the Respondents nos.1 and 2.

46.2. The scheme of the GO dated 29.08.2014 is such that the Respondent no.2 was supposed to pay the no litigation incentive/additional compensation to the erstwhile

landowners and the same was to be recovered from the allottees (*para 2 of GO dated 29.08.2014*).

46.3. Further, from the contents of paragraph 7 of agenda no.51/04 of the 51st meeting of the Respondent no.2, it is evident that the scheme of the policy decision of the Respondents herein was that the Respondent no.2 shall pay the additional compensation/no-litigation incentive to the landowners and recover the same from the allottees.

46.4. In the present case, the Respondent no.2 has not paid any no litigation incentive / additional compensation to the erstwhile landowners of the subject land in dispute and has acted in violation of the GO dated 29.08.2014 by demanding the same from the petitioner. Whereas, the Respondent no.2, in clear violation of the directions contained in the GO dated 29.08.2014 as well as the decision taken in its 51st board meeting, has been demanding this amount from the petitioner.

46.5. In view of the specific scheme of the policy decision of the respondents manifested vide the GO dated 29.08.2014 as well as the decision taken in the 51st board meeting, no liability to pay additional compensation can be fastened upon the petitioner herein unless the same is actually paid by the Respondent no.2 to the erstwhile landowners.

46.6. It is evident from the letter dated 15.12.2014 issued by the Respondent no.2. that the interest being levied by it is in the nature of penal interest. Therefore, this interest being claimed is not compensatory in nature but rather as a penalty. Also, since no litigation incentive/additional compensation has not been paid by the Respondent no.2 to the erstwhile landowners, it cannot claim that this interest is compensatory in nature.

46.7. The power to recover 'penalty' is traceable to section 13 of the 1976 Act, which is reproduced hereunder for convenience sake:

"13. Imposition of penalty and mode of recovery of arrears: Where any transferee makes any default in the payment of any consideration money or instalment thereof or any other amount due on account of the transfer of any site or building by the Authority or any rent due to the Authority in respect of any lease or where any transferee or occupier makes any default in the payment of any fee or tax levied under this Act, the Chief Executive Officer may direct that in addition to the amount of arrears, a further sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty."

46.8. In order for section 13 of the 1976 Act to get triggered, the condition precedent is that the amount should actually be due. Since, the Respondent no.2 has not paid the additional compensation/no-litigation incentive to the erstwhile landowners of the subject land in dispute, the said amount (*as per the scheme of the GO dated 29.08.2014 as well as the decision taken in the 51st board meeting*) is

not due from the petitioner. Therefore, no penalty by way of interest can be imposed upon the petitioner.

47. That without prejudice to the above, it is submitted that:

47.1. This Hon'ble Court was pleased to grant interim stay of the demand on account of additional compensation vide its interim order dated 05.09.2017 in WRIT-C No. 40702 of 2017. The petitioner remained successful in the litigation before this Hon'ble Court whereby the demand on account of additional compensation was quashed and set-aside vide the final judgment and order dated 28.05.2020.

47.2. The final judgment and order dated 28.05.2020 was set-aside by the Hon'ble Supreme Court of India vide the judgment dated 19.05.2022 titled Yamuna Expressway Industrial Development Authority vs. *Shakuntala Education and Welfare Society and Ors* reported as 2022 SCC OnLine SC 655 and the demand on account of additional compensation was upheld. It is reiterated that the final judgment and order dated 28.05.2020 passed by this Hon'ble Court in WRIT-C No. 40702 of 2017 was never stayed by the Hon'ble Supreme Court till pronouncement of the final judgment dated 19.05.2022.

47.3. It is evident from the letter dated 15.12.2014 issued by the Respondent no.2. That the interest being levied by it is

in the nature of penal interest. Therefore, this interest being claimed is not compensatory in nature but rather as a penalty. Also, since no litigation incentive/additional compensation has actually not been paid by the Respondent no.2 to the erstwhile landowners, it cannot claim that this interest is compensatory in nature.

47.4. It is submitted that payment of interest to a party during the period of stay is based on the principle of restitution i.e. in case the party against whom the stay order operates remains successful and the demand is upheld, such a successful party has to be restituted back to its original position, as if the stay order had never come into force. However, in the present case there is no case of any loss being incurred by the Respondent no.2 since no payment on account of no litigation incentive/additional compensation has been made by it. Furthermore, since the interest being charged is penal in nature and not compensatory, therefore, the same ought not to be imposed at all.

47.5. Without prejudice, it is respectfully submitted that such interest ought not to be levied at least for the period of operation of interim stay granted vide the interim order dated 05.09.2017 up to the final judgment dated 19.05.2022 passed by the Hon'ble Supreme Court in

Yamuna Expressway Industrial Development Authority vs. Shakuntala Education and Welfare Society and Ors reported as 2022 SCC OnLine SC 655.

(E) Waiver of interest on account of Covid 19 period w.e.f.22.03.2020 to 30.09.2021

48. That the COVID 19 pandemic adversely affected the real estate sector including the financial health of the Petitioner herein. The same has been recognized as a *force majeure* event by various judicial forums including the Hon'ble Supreme Court. In view thereof, the Petitioner's prayer for waiver of interest during Covid 19 period ought to have been accepted by the Respondent no.2, especially in light of the fact that the Respondent no.2 has given similar relief to other allottees, as would be evident from the order passed by the Respondent no.2. Therefore, the Respondent No.2 cannot deny similar relief to the Petitioner herein. It is respectfully prayed silence of the Respondent no.2 in the compliance affidavit dated 13.12.2022 as well as the decision taken by the Respondent no.2's board on 02.12.2022 may be held against the Respondent no.2 and it may be deemed that the Respondent no.2 has accepted the said proposal. A Copy of the Order passed by the respondent no.2 is annexed hereto as **Annexure RA-21.**

(F) Exorbitant penal interest charged over & above as applicable interest being excessive, illegal and arbitrary.

49. That it is submitted that the Respondent No.2 has charged penal interest towards additional penal interest charged over & above as applicable rate in accordance terms of letters of allotment of land. The over-charged amount is to the tune of Rs.466,548,489/-. It is respectfully prayed that this interest has been charged over and above the applicable rate in accordance with the settled contractual terms and conditions between the parties and therefore the same is illegal and arbitrary besides being excessive. Thus, the action of the Respondent No.2 in charging the said over and above penal interest ought to be quashed and set aside.

50. That it is submitted that though Respondent no.2 has taken any decision on the proposal for homebuyers, however, the petitioner is committed towards its composite proposal dated 08.11.2022 for the homebuyers. The Respondent No. 2 may be directed to grant requisite approvals to the Petitioner in a time bound manner enabling it to complete the construction of the homes in a timely manner. The Petitioner submits that it has the capability technical and financial to perform and deliver on its commitment. In this regard it is pertinent to note that **since January 2017 the Petitioner has paid Rs. 717.97 Crores to the Respondent No. 2.** Further, the **Petitioner has also deposited Rs. 750 Crores on the directions of the Hon'ble Supreme Court** in the insolvency proceedings of its subsidiary Jaypee Infratech Ltd. Though, the Hon'ble Supreme

Court vide its judgment dated 24.03.2021 has released this money to the Petitioner subject to reconciliation by NCLT it has not been released so far. It is also pertinent to mention here that the **Petitioner since January 2017 has constructed and received occupancy certificate of 8631 homes in Noida** which proves its capability to construct homes.

51. That the Petitioner further undertakes to deposit total amount due of Rs. 1295.67 crores (*on account of balance land payments alongwith balance lease rent and additional compensation*) which will further to reduce to Rs 1016.99 crores as detailed in earlier paras, in case interest is calculated @ SBI MCLR, the case of which has been approved in the 74th Board meeting of Respondent no 2 and the matter has been referred for the approval of Respondent no. 1, as calculated hereto before, by disposing of its assets in the SDZ, within 15 months from the date of final disposal of the present writ petition.

52. That in view of the foregoing submissions, it is respectfully submitted that the present writ petition deserves to be allowed and the respondents may be directed to restore the allotment of the subject land in dispute.