

**REAL ESTATE APPELLATE TRIBUNAL, PUNJAB**  
SCO No. 95-98, Bank Square, P.F.C Building, Sector-17-B, Chandigarh

Subject: -

**APPEAL NO. 130 OF 2021**  
**COUNTRY COLONISERS PVT. LTD.**

**VERSUS**

**RUPINDER KAUR & ORS.**

**\*\*\***

Memo No. R.E.A.T./2022/ 158

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1<sup>ST</sup>**  
**FLOOR, BLOCK B, PLOT NO.3, MADHYA MARG,**  
**SECTOR-18, CHANDIGARH-160018.**

Whereas appeals titled and numbered as above was filed before the Real Estate Appellate Tribunal, Punjab. As required by Section 44 (4) of the Real Estate (Regulation and Development) Act, 2016, a certified copy of the order passed in aforesaid appeals is being forwarded to you and the same may be uploaded on website.

Given under my hand and the seal of the Hon'ble Tribunal this **04<sup>th</sup>**  
day of April, 2022.



**REGISTRAR**  
**REAL ESTATE APPELLATE TRIBUNAL, PUNJAB**

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**BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB**

Appeal No. 130 of 2021

**MEMO OF PARTIES**

Country Colonisers Pvt. Ltd., Sector 85, SAS Nagar, Mohali, Punjab,  
through its authorized signatory/representative Sh. Abhishek Tandon.

**...Appellant**

**Versus**

1. Rupinder Kaur Narang, w/o Sh. Harvinder Singh Narang, r/o H.  
no. 2, North Estate, Bibi wala road, Bathinda, Punjab;
2. Harvinder Singh Narang, r/o H. no. 2, North Estate, Bibi wala road,  
Bathinda, Punjab;
3. Parminder Kaur Khalsa, w/o Dr. Ishdeep Singh Narang, H. no. 2,  
North Estate, Bibi wala road, Bathinda, Punjab.

**...Respondents**

PLACE: Chandigarh

DATE: 23.12.2021



(Tejeshwar Singh, Dewangana Chhillar and Suraphi Grover)  
P/1355/2015                      D/417/2016                      D/6835/2017  
Advocates  
COUNSEL FOR THE APPELLANT

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 130 OF 2021

COUNTRY COLONISERS PVT. LTD.

VERSUS

RUPINDER KAUR & ORS.

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**Present: -** Mr. Tejeshwar Singh, Advocate for the appellant.  
Mr. Sanjeev Sharma, Advocate for the respondents.

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This appeal is directed against the order dated 15.04.2021 passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab.

Learned counsel for the appellant at the outset places reliance on the recent judgment of the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.", and refers to Para 83 and 86, to contend that the Adjudicating Officer would have no jurisdiction to entertain and decide issues relating to refund and interest, even though he is specifically empowered under the Act to deal with the issues of compensation, which has also been approvingly observed by the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC." He thus prays that in view of the authoritative pronouncement of the Hon'ble Supreme Court, the impugned orders need to be set aside.

Serious objection has been taken by the respondents that the amount deposited by the appellant under





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Section 43(5) of the Act is deficient. This should be construed to be non-compliance of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, thus warranting dismissal of the appeal solely on this ground.

We have heard the learned counsel for the parties and are of the opinion that more than 1.97 crores have been deposited before us and it is contended by the appellant that the disputed amount had also been paid to the respondents. Reference to the cheques appearing at Page No.90 onwards of the paperbook has been made.

Be that as it may, we are not entering upon the controversy of non-payment of the deficient amount to the respondents or the deficiency in compliance of Section 43(5) of the Act, considering the order proposed to be passed by us on the ground of lack of jurisdiction of the Adjudicating Officer to order refund etc, regarding which the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.", has observed as follows and we as a Tribunal in Appeal No.277 of 2020 by a majority view held in deference with the observations of the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC." :-



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"83. So far as the single complaint is filed seeking a combination of reliefs, it is suffice to say, that after the rules have been framed, the aggrieved person has to file complaint in a separate format. If there is a violation of the provisions of Sections 12, 14, 18 and 19, the person aggrieved has to file a complaint as per form (M) or for compensation under form (N) as referred to under Rules 33(1) and 34(1) of the Rules. The procedure for inquiry is different in both the set of adjudication and as observed, there is no room for any inconsistency and the power of adjudication being delineated, still if composite application is filed, can be segregated at the appropriate stage.

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the



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*outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

This has been elaborately dealt with by us in Appeal No.277 of 2020 and a detailed order is passed by us.

Since the matter, in any case, has to be remanded back, the deficient amount pointed by the appellant even if presumed to be as a deficiency in compliance of Section 43(5) of the Act, it would be inconsequential considering the remand of the matter, necessitated on account of judicial observations referred to above, in which eventuality the entire amount deposited by the appellant would have to be refunded to him,





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since the proceedings are to be gone into by the Authority de novo.

However, we give liberty to the respondents to raise this issue of the appellant's assertion regarding shortfall of payment to them. If such an issue is raised, needless to say the Authority would grant consideration in accordance with law.

Accordingly, we dispose of the appeal with a liberty to the complainants to move an appropriate application in Form M seeking refund & interest and Form N seeking compensation before the competent Authority/ Adjudicating Officer.

In case, such applications are moved, the same shall be decided expeditiously by the Competent Authority/ Adjudicating Officer as the case may be in accordance with law.

We are of the opinion, that in order to ensure expeditious disposal of the matter, the parties should put in appearance before the Authority/Adjudicating Officer as the case may be, which in turn shall pass appropriate orders either for allocating the proceedings to the appropriate Authority/Adjudicating Officer or for return of the complaint with a permission to the complainant to file appropriate proceedings in Form-M or Form-N as the case may be. The



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Authority in this manner would have the benefit of providing a time-frame for the entire process as both the parties would be before it and the necessity of affecting service etc. may not arise. The Authority/ Adjudicating Officer shall then proceed to determine the matter in accordance with law.

Parties are directed to appear before the Real Estate Regulatory Authority on 11.04.2022. Files be consigned to record room.

The amount deposited by the appellant/promoter under Section 43(5) of the Act be disbursed to the appellant/promoter after proper identification and due verification in accordance with law.

*Sd/-*  
JUSTICE MAHESH GROVER (RETD.)  
CHAIRMAN

*Sd/-*  
S.K. GARG, B & S. JUDGE (RETD.)  
MEMBER (JUDICIAL)

March 17, 2022

AN



Certified To Be True Copy  
*Shamsher Singh*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

04/04/2022



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 130 of 2021

Country Colonisers Pvt. Ltd., Sector 85, SAS Nagar, Mohali,  
Punjab through its authorized signatories/representative Sh.  
Abhishek Tondon

.....Appellant

Versus

1. Rupinder Kaur Narang, w/o Sh. Harvinder Singh Narang, r/o H. no. 2, North Estate, Bibi wala road, Bathinda, Punjab;
2. Harvinder Singh Narang, r/o H. no. 2, North Estate, Bibi wala road, Bathinda, Punjab; &
3. Parminder Kaur Khalsa, w/o Dr. Ishdeep Singh Narang, H. no. 2, North Estate, Bibi wala road, Bathinda, Punjab.

.....Respondents

**Present:** Mr. Tejeshwar Singh, Advocate for the appellant.  
Mr. Sanjeev Kumar Sharma, Advocate for the respondents.

**QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN**  
**SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),**  
**MEMBER (JUDICIAL)**  
**ER. ASHOK KUMAR GARG, CHIEF ENGINEER**  
**(RETD.), MEMBER (ADMN./ TECH.)**

**JUDGMENT: (ER. ASHOK KUMAR GARG, CHIEF ENGINEER**  
**(RETD.), MEMBER (ADMN./TECH.))**

**(MINORITY VIEW)**



1. By this order, I will dispose off above mentioned appeal bearing Appeal No. 130 of 2021 (Country Colonisers Pvt. Ltd. versus Rupinder Kaur Narang and others) against order dated 15.04.2021 passed by Sh. Balbir Singh, Adjudicating Officer

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(hereinafter referred to as the AO) of Real Estate Regulatory Authority Punjab (hereinafter referred to as the Authority) in the complaint bearing No. TR AO 45 of 2019 GC No. 1202 of 2019.

2. The said complaint has been accepted by the AO to the following extent and heads:-

1.	Principal amount	Rs.1,33,93,761/-
2.	Simple interest	At the SBI highest marginal cost of lending rate (as on today) plus 2% on the above amount from the date of payment(s) till realization
3.	On account of mental agony and litigation expenses	Rs.1,25,000/-

The appellant has been directed to pay the above said amount to the complainants within sixty days from the date of the impugned order; and it has also been ordered that the loan of the HDFC bank obtained by the complainants in this case, shall be the first charge on the above said amount.

3. As per paragraph 22 of the impugned order dated 15.04.2021, the complaint was filed on 15.02.2019. The complainants, vide their application dated 11.06.2019 (page-151 of the paperbook of the present appeal), had informed the Adjudicating Officer that they had filed a complaint in Form-M (*seems to be earlier complaint bearing GC No. 1202 of 2019 filed on 15.02.2019*) seeking refund of amount, interest and compensation along with litigation expenses in view of the prevailing circular issued by the Authority; and in view of an order passed by this Tribunal in **Sandeep Maan versus Real Estate Regulatory Authority Punjab and Others** and connected appeals, they were filing complaint in Form 'N' before the Adjudicating Officer under section 31 read with section 71(1) of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*)





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and Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*) claiming refund of the amount of Rs.1,33,93,760/- paid by the complainants as demanded by the appellant (copy of the statement of account stated to be attached with the complaint as Annexure C-3 has not been placed on record before this Tribunal), along with interest @ 18% p.a. besides compensation/damages of Rs.10,00,000/- and Rs.1,10,000/- as the litigation cost.

4. Aggrieved by the above said order dated 15.04.2021 of the Adjudicating Officer, the appellant filed appeal dated 23.12.2021, bearing Appeal No. 130 of 2021, before this Tribunal and prayed to set aside the impugned order & dismiss the complaint.
5. The appellant has inter alia contended in the grounds of the appeal (the contentions are listed here only in brief) (i) that the Adjudicating Officer does not have the jurisdiction to deal with and decide matters involving refund and interest; (ii) that the appellant has already fulfilled its obligations under the settlement deed dated 10.11.2017 (inter alia extending the subvention period till offer of possession) and paid/borne Rs.39,45,942/- (= Rs.10,97,582/- towards pre-EMI interest up to 30.09.2015 paid/borne as deduction while receiving payments from the Bank + Rs.9,15,928/- towards pre-EMI interest from January 2016 to March 2017 credited/adjusted to the complainants' accounts + Rs.19,32,432/- towards pre-EMI interest from April 2017 till May 2019 out of which Rs.16,47,593/- was paid by cheques to the complainants and Rs.2,84,839/- was deposited as TDS) (iii) that the construction of the unit is complete and possession thereof has been offered on 06.11.2019 after obtaining occupancy certificate dated 16.10.2019; (iv) that even if refund is to be granted, it ought





to be subject to adjustment of the pre-EMI interest benefit (Rs.39,45,942/-) given by the appellant on behalf of the complainants; (v) that the actual amount paid by the complainants (including amount released by the Bank) to the appellant is Rs.1,26,87,235/- and not Rs.1,33,93,761/-; (vi) that the Bank (HDFC Limited) was not impleaded as a party because out of total Collections amount of Rs.1,41,53,162/-, the complainants have actually paid an amount of Rs.1,26,87,235/- (Rs.36,50,297/- by the complainants and Rs.90,36,938/- by the Bank); (vii) that the complainant has no cause of action to file the complaint; (viii) that since the project in question is complete, the Act ceases to apply; (ix) that no adjudication has been done on specific legal objections taken by the appellant (x) the complainant has defaulted in making timely payments; and (xi) the Adjudicating Officer has awarded excessive compensation.

**MY OPINION IN THE MATTER OF JURISDICTION OF THE ADJUDICATING OFFICER OF REAL ESTATE REGULATORY AUTHORITY PUNJAB FOR ADJUDICATION OF COMPLAINTS MADE IN COMPOSITE APPLICATION INVOLVING REFUND/RETURN OF AMOUNT DEPOSITED BY THE ALLOTTEE, INTEREST THEREON AND COMPENSATION:**

6. I have expressed my opinion in detail while disposing off Appeal No. 277 of 2020 (EMAAR India Ltd. (formerly EMAAR MGF Land Limited) versus Sandeep Bansal) vide order dated 24.02.2022 and further updated it while disposing off cross appeals bearing Appeal No. 268 of 2020 (Vijay Mohan Goyal & Anr. versus Real Estate Regulatory Authority Punjab & Ors.) and Appeal No. 6 of 2021 (PDA Patiala versus Vijay Mohan & Ors.) vide order 03.03.2022, as per which, I am of the view that the appeals, against the orders passed by the Adjudicating Officer in

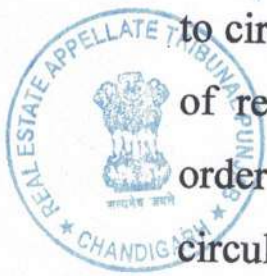




the complaints involving composite claim of refund, interest thereon and compensation, need not be remanded by this Tribunal to the Authority but should be decided by this Tribunal on merit, provided that such orders have been passed by the Adjudicating Officer pursuant to the directions imparted by the Authority in this regard vide its circular No. RERA/Pb./ENF-17 dated 19.03.2019 in view of the judgment dated 27.02.2019 of this Tribunal in Appeal No. 53 of 2018 or vide circular No. RERA/PB/LEGAL/24 dated 05.03.2021 of the Authority but before (in both the cases) the decision of the Authority circulated vide its circular No. RERA/LEGAL/2021/8950 dated 06.12.2021.

**MY OPINION IN THE APPEAL**

7. Most of the contentions of the appellant in the appeal have already been adjudicated upon by the Adjudicating Officer and I generally don't see any merit in those contentions to interfere in the findings of the Adjudicating Officer, except on certain issue as detailed hereinafter.
8. It has been contended by the appellant that the Adjudicating Officer does not have the jurisdiction to deal with and decide matters involving refund and interest. This contention of the appellant stands repelled vide paragraphs 10 to 12 of the impugned order dated 15.04.2021, whereby the Adjudicating Officer referred to circular dated 05.03.2021 issued by the Authority. Taking notice of reference of this circular dated 05.03.2021 in the impugned order and then perusing, with specific reference to aforesaid circular dated 05.03.2021, the judgment dated 11.11.2021 passed by Hon'ble Supreme Court of India in Civil Appeal No(s). 6745-6749 of 2021 titled '**M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP & Ors. etc and connected matters**',



I arrived at the conclusion, specifically by conjoint reading of paragraphs 86, 116 & 120 of aforesaid judgment, that the delegation of its power of “refund of the amount and interest thereon” by the Authority vide aforementioned circular dated 05.03.2021, to its Adjudicating Officer in the cases in which compensation (including payment of interest as compensation) is additionally claimed is in accordance with the mandate of law viz section 81 of the Act and hence, the so empowered/directed Adjudicating Officer has the jurisdiction to deal all cases where the claim is for the return of amount deposited by the allottee, interest thereon and in addition compensation (including payment of interest as compensation). Accordingly, during the proceedings held on 10.01.2022 in the present appeal No. 130 of 2021, I expressed my aforementioned opinion, which has also been expressed by me as minority view in the judgments/orders of this Tribunal in the appeals mentioned under paragraph 6 above and some more appeals disposed off thereafter. Because aforesaid circular dated 05.03.2021 has been amended by the Authority vide its circular dated 06.12.2021 i.e. after the date of the impugned order dated 15.04.2021, therefore, I hereby hold that the Adjudicating Officer was having jurisdiction at the time of passing the impugned order to deal with complaints/applications involving refund of the amount deposited, interest thereon and compensation etc.



9. The appellant has also contended that the appellant has already fulfilled its obligations under the settlement deed dated 10.11.2017 (inter alia extending the subvention period till offer of possession) and paid/borne Rs.39,45,942/- (= Rs.10,97,582/- towards pre-EMI interest up to 30.09.2015 paid/borne as deduction while receiving



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payments from the Bank + Rs.9,15,928/- towards pre-EMI interest from January 2016 to March 2017 credited to/adjusted in the complainants' account + Rs.19,32,432/- towards pre-EMI interest from April 2017 till May 2019 out of which Rs.16,47,593/- was paid by cheques to the complainants and Rs.2,84,839/- was deposited as TDS); and that even if refund is to be granted, it ought to be subject to adjustment of the pre-EMI interest benefit (Rs.39,45,942/-) given by the appellant on behalf of the complainants.

10. Aforementioned issue of settlement deed dated 10.11.2017 and payment/credit/adjustment of pre-EMI interest accrued till May 2019 (claimed by the appellant to be Rs.39,45,942/-) has been adjudicated by the Adjudicating Officer under paragraphs 14 to 18 and paragraphs 24 of the impugned order dated 15.04.2021. I agree with the Adjudicating Officer that the promoter-appellant has voluntarily agreed to reimburse the pre-EMI interest payable by the allottee/buyer to the financial institution/bank, ostensibly to arrange funds from the Financial Institution payable on behalf of allottee and I also agree with his findings that appellant's argument for adjusting pre-EMI interest paid by the appellant to the Bank on behalf of the complainant-allottee is fallacious.

11. In my opinion, there appears to a logic to some extent in this contention of the appellant, though this contention may not be acceptable even to me in its entirety or in the manner as sought by the appellant.

12. I am of the view that we should not lose sight of the fact that the appellant-promoter, who has already borne the liability of pre-EMI interest (termed in the tripartite agreement dated 24.07.2013 as the



“Assumed Liability”) up to a certain period i.e. 24 months (termed in the tripartite agreement as the “Liability Period”), may be voluntarily, should not again be made liable to pay interest for such “Liability Period” on the amounts disbursed by the Bank in respect of which aforementioned “Assumed Liability” is applicable. Similarly, there should not be any duplicity in the liability of the appellant towards interest even beyond aforementioned “Liability Period” of 24 months (which ended on 30.09.2015) but up to May 2019 i.e. the period up to which the appellant claims to have credited/adjusted or paid pre-EMI interest.

13. As per pre-EMI interest calculation sheets (i.e. FRIL calculations of the Bank filed by the appellant with his appeal as Annexures A-5 to A-7), the loan amount appears to be disbursed as under:

Disb. No.	Disb. Date	Disb. Amount (Rs.)	FRIL start date	FRIL stop date	Total discounted amount recievable (Rs.)
1.	30.09.2013	24,04,938	30.09.2013	30.09.2015	4,68,395
2.	07.03.2014	33,16,062	07.03.2014	30.09.2015	5,23,739
5.*	12.06.2015	33,15,938	12.06.2015	30.09.2015	1,05,448
<b>Total</b>		<b>90,36,938</b>			<b>10,97,582</b>

\* No record of Disb. No. 3 and 4, if there was any, has been placed on record before this Tribunal.

14. Thus, while disbursing a loan aggregating to Rs.90,36,938/- to the appellant on behalf of the complainants in above mentioned three tranches, an amount aggregating to Rs.10,97,582/- appears to have been deducted by the Bank as pre-EMI interest up to 30.09.2015 (and not up to December 2015 as claimed by the appellant under paragraph 5A(iv) of the appeal and as mentioned under clause 1 of the alleged settlement deed dated 10.11.2017).

15. The complainants were/are liable to repay aforementioned loan amount aggregating to Rs.90,36,938/- to the Bank along with interest thereon with effect from 01.10.2015.





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16. The detail of receipt of remaining amount received by the appellant from the complainants (*as placed on record before this Tribunal by the appellant in the form of a document titled "Interest Calculation on Payment Received (HDFC Finance)" for compliance of provisions of the proviso under section 43(5) of the Act*) out of Rs.1,33,93,761/-, besides aforesaid amount of Rs.90,36,938/- disbursed by the Bank, is as under:-

Particulars	Amount received (Rs.)	Receipt date
Payment received	20,51,041	18.03.2013
Payment received	1,55,000	15.07.2014
Payment received	4,00,000	08.08.2014
Brokerage adjusted	4,00,000	23.08.2014
Payment received	5,00,000	23.03.2015
Brokerage adjusted	1,50,000	15.05.2015
Payment received	5,44,256	30.05.2015
Interest on subvention credited/after lapse of Sub period	1,56,526	10.11.2017
<b>Total</b>	<b>43,56,823</b>	

17. One of the contentions of the appellant is that the actual amount paid by the complainants (including amount released by the Bank) to the appellant is Rs.1,26,87,235/- (Rs.36,50,297/- by the complainants and Rs.90,36,938/- by the Bank) and not Rs.1,33,93,761/- as claimed by the complainants in their complaint (Annexure C-3 not placed on record by the appellant before this Tribunal). The difference i.e. Rs.7,06,526/- in the aforementioned two amounts matches the sum total of the Rs.4,00,000/-, Rs.1,50,000/- & Rs.1,56,526/- admittedly received by the appellant on 23.08.2014, 15.05.2015 & 10.11.2017 as "Brokerage adjusted", "Brokerage adjusted" & "Interest on subvention credited/after lapse of sub period" respectively as mentioned in the table under paragraph 16 above. However, the said difference has not been





explained by the appellant in a transparent and conspicuous manner keeping in view provisions of the admitted instruments/ documents executed between the parties such as Apartment Allottee(s) Arrangement dated 17.07.2013, Tripartite Agreement dated 24.07.2013 etc.

18. The appellant, vide its letter dated 04.08.2016 (Annexure C-5, which has not been placed on record by the appellant before this Tribunal but is mentioned in the complaint, reply thereto and the impugned order), has extended his liability to bear the pre-EMI interest accruing on the outstanding loan amount till 30.06.2018 or offer of possession, which ever is earlier.
19. The appellant under the settlement deed dated 10.11.2017 agreed to bear the pre-EMI interest till the offer of the possession of the apartment to the complainants and also undertook to reimburse the amount of Rs.9,15,928/- paid by the complainants to the Bank as the pre-EMI interest from January 2016 to March 2017 and to reimburse the pre-EMI interest on month to month basis April 2017 onwards. However, the said amount of **Rs.9,15,928/- has admittedly not been actually reimbursed to the complainant** but has been claimed by appellant to be credited/adjusted in the complainants' accounts against the balance sale consideration of the apartment.
20. The appellant has claimed to have reimbursed an amount of Rs.19,32,432/- (Rs.16,47,593/- is claimed to have been paid by cheques to the complainants and Rs.2,84,839/- is claimed to have been deposited as TDS) to the complainants in the name of Ms. Rupinder Kaur Narang (one of the complainants) towards the monthly pre-EMI interest payments from April 2017 till May 2019



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as detailed below (said details have been compiled from the Annexures A-9 to A-11 of the appeal and reply dated 25.09.2019):-

Cheque No.	Dated	Cheque Amount (Rs.)	Debitted in the appellant's bank account on	TDS Amount	TDS deposit date
332292	08.09.2017	2,52,788	14.11.2017	28,088	07.10.2017
312450	20.12.2017	2,54,844	25.01.2018	28,316	06.01.2018
				45,430	26.04.2018
				56,340	26.04.2018
312788	28.03.2018	1,88,910	12.04.2018	20,990	26.04.2018
				6,944	31.05.2018
313147	10.07.2018	2,44,476	16.07.2018	20,221	07.08.2018
35313445	14.09.2018	1,21,320	24.09.2018	13,481	06.10.2018
313737	15.11.2018	1,24,032	22.11.2018	13,782	06.12.2018
35314013	11.01.2019	1,25,388	16.01.2019	13,932	07.02.2019
314412	17.04.2019	2,00,286	24.04.2019	22,254	29.04.2019
314699	18.06.2019	1,35,549	28.06.2019	15,061	05.07.2019
<b>Total</b>		<b>16,47,593</b>		<b>2,84,839</b>	

21. In view of the above facts, I am of the view that the appellant should pay the following amounts to the complainants within sixty days of the date of this order:-

(i) actually reimburse the interest accrued for the period from 01.10.2015 to 31.05.2019 (44 months) on an amount of Rs.90,36,938/- disbursed by the Bank to the appellant on behalf of the complainants, after accounting for the amount already reimbursed on this account;

(ii) refund the aforesaid principal amount of Rs.90,36,938/- along with interest thereon at the SBI highest marginal cost of lending rate plus 2% as per Rule 16 of the Rules from 01.06.2019 till its realization; and

(iii) refund the amounts paid by the complainants (other than aforesaid amount of Rs.90,36,938/-) to the appellant on any account along with interest thereon at the SBI highest marginal cost of lending rate plus 2% as per Rule 16 of the






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Rules from dates of respective payments till realization thereof.

22. The appellant had claimed that the possession of the apartment was offered on 06.11.2019 after obtaining occupation certificate dated 16.10.2019. However, as per clause 5.1 of the Apartment Allottee(s) Agreement dated 17.03.2013, the possession of the unit in question was to be delivered by 16.07.2016, but the appellant failed to do so. Thus, in terms of section 18(1) of the Act, the appellant is liable on demand (such demand has been made by the allottees-complainants through their complaint filed on 15.02.2019) to return the amount received by the appellant in respect of the unit with interest at prescribed rate including compensation.
23. The appellant's next contention is that the complainants have defaulted in making timely payments and catastrophically failed to pay their dues as stipulated under the terms and conditions of the agreement and thus violated section 19 of the Act. It has been contended in the appellant's reply dated 25.09.2019 to the complaint as well as in its appeal dated 23.12.2021 that as of the date of its aforementioned appeal/reply, an amount of Rs.9,32,723.19 is outstanding against the complainants as allegedly detailed in its appeal, which is reproduced below:-



S. No	Particulars	Amount	Due Date	Fully Paid on	Delay
1.	Excavation upto 5 feet	34,18,399.97/-	17.08.13	11.03.14	7 months
2.	4 <sup>th</sup> Floor Roof Slab (including PLC)	43,12,588.97/-	22.03.14	30.05.15	1 Year 2 months
3.	Internal Plastering	1,56,525/-	25.12.15	10.11.17	Almost 2 years"

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**24.** However, the factual position, as prepared from the material on record, emerges some what as under:-

Due date of payment	Amount due (including S.T. @ 3.09% (Rs.))	Date of receipt of payment	Amount paid (Rs.)	Remarks
On booking	5,00,000	18.03.13	5,00,000	
04.04.2013 (45 Days of Booking)	15,51,041	18.03.13	15,51,041	
17.08.2013 (Excavation upto 5 feet)	34,18,400	10.03.13 10.03.13 11.03.14	19,36,543 4,68,395 10,13,462	Received from HDFC Pre-EMI interest upto 30.09.2015 Received from HDFC
22.03.2014 (Completion of 4th floor roof slab)	42,38,816	11.03.14 11.03.14 15.07.14 08.08.14 23.08.14 23.03.15 15.05.15 30.05.15	17,78,861 5,23,739 1,55,000 4,00,000 4,00,000 5,00,000 1,50,000 3,31,246	Received from HDFC Pre-EMI interest upto 30.09.2015
---.---.--- (Completion of structure/brick work)	34,18,400	30.05.15 15.06.15	2,13,010 32,05,390	Received from HDFC
25.12.2015 (Completion of internal plastering)	1,54,635	15.06.15 15.06.15 10.11.17 (could have been adjusted any time after 01.11.15)	5,100 1,05,448 44,087	Received from HDFC Pre-EMI interest upto 30.09.2015 By adjusting interest on Bank loan accrued after 30.09.2015
06.11.2019 (Offer of Possession)	13,67,360			Possession was due on 16.07.2016 & complaint seeking refund filed on 15.02.2019.

**25.** It may also be noted that (i) admittedly after initial payment of 15% of the basic sale price by the complaints, the entire remainder amount except taxes, PLC & other charges such as stamp duty, registration charges, maintenance charges, water/electricity charges etc to the extent of the sanctioned loan was to be disbursed by the





Bank on behalf of the complainant directly to the appellant under the tripartite agreement for loan of Rs.97,00,000/- granted under subvention scheme; (ii) that the Bank disbursed Rs.90,36,938/- and thus remaining amount of Rs.6,63,062/- was not got disbursed for the reasons best known to the parties to the tripartite agreement; (iii) that second and third tranches of the loan could have been got expedited in unison with the achievement of the milestones of the payment schedule; (iv) that the complainants had made adequate payments from their other resources (i.e. other than out of the sanctioned loan of Rs.97,00,000/-) even after aforementioned initial 15% payment; (v) that the alleged offer of possession dated 06.11.2019 has been made after inordinate delay and after the complainant has ultimately opted for the refund through his complaint filed on 15.02.2019.

26. Hence, this contention of the appellant regarding delay in receipt of payments is of no help.

27. The another contention of the appellant is that the Adjudicating Officer has awarded excessive compensation. In this regard, the perusal of the impugned order reveals that the Adjudicating Officer has not followed the procedure for adjudging the quantum of compensation as laid down in the Act and as has been directed by this Tribunal vide order dated 30.11.2021 in Appeal No. 11 of 2021 (**Omaxe New Chandigarh Extension Pvt. Ltd. versus Gurmeet Singh Gulati & Anr.**).

28. The contention of the appellant that the complainants failed to implead HDFC bank as a party has no merit, because, besides negating such a contention, the Adjudicating Officer, while ordering the refund, interest thereon and compensation, has also



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ordered through the impugned order that the Bank, who has disbursed loan to the appellant on behalf of the complainant under subvention scheme, shall be first charge on the awarded amount.

29. The cause of action to file the complaint is obvious i.e. the appellant has failed to deliver possession of the unit duly completed by the date specified in the agreement; and as per section 18(1) of the Act, an allottee so aggrieved has unconditional right to withdraw from the project and demand refund of amount deposited with the promoter along with interest thereon and compensation.
30. The contention that no adjudication has been done on specific legal objections taken by the appellant is frivolous.
31. In view of above, the appeal is partially accepted only to the following extent only:-
- (i) Interest accrued for the period from 01.10.2015 to 31.05.2019 on an amount of Rs.90,36,938/- disbursed by the Bank to the appellant on behalf of the complainants, after accounting for the amount already reimbursed on this account, be paid by the appellant to the complainants within sixty days of the date of this order;
  - (ii) Aforesaid principal amount of Rs.90,36,938/-, along with interest thereon at the SBI highest marginal cost of lending rate plus 2% as per Rule 16 of the Rules from 01.06.2019 till its realization, be refunded by the appellant to the complainants within sixty days of the date of this order;
  - (iii) The amounts paid by the complainants to the appellant on any account from their other resources (i.e. other than out of





the loan of Rs.97,00,000/- sanctioned by the Bank), along with interest thereon at the SBI highest marginal cost of lending rate plus 2% as per Rule 16 of the Rules from the dates of respective payments till realization, be refunded by the appellant to the complainants within sixty days of the date of this order; and

- (iv) The quantum of compensation only is liable to be re-adjudged by the Adjudicating Officer by following the procedure as laid down in the Act and as directed by this Tribunal vide order dated 30.11.2021 in Appeal No. 11 of 2021 (**Omaxe New Chandigarh Extension Pvt. Ltd. versus Gurmeet Singh Gulati & Anr.**). The case is accordingly remanded back to the Adjudicating Officer only for re-adjudging the compensation.
32. The appeal is accordingly disposed off. File be consigned to record room and a copy of this order be filed in the file of the appeal and also be communicated to the parties as well as to the Authority and the Adjudicating officer.

Sd/\_\_\_\_\_  
ER. ASHOK KUMAR GARG, C.E. (RETD.),  
MEMBER (ADMINISTRATIVE/TECHNICAL)

March 17, 2022



Certified To Be True Copy  
Shaminder Singh  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

04/04/2022