

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

Subject: -

APPEAL NO. 47 OF 2021(O&M) M/S COUNTRY COLONISERS PVT. LTD. VERSUS JASVINDER SINGH	APPEAL NO. 36 OF 2021(O&M) M/S COUNTRY COLONIZERS PRIVATE LTD. VERSUS AMARJIT KAUR AND ORS.
APPEAL NO. 08 OF 2021(O&M) M/S COUNTRY COLONISERS PVT. LTD. VERSUS KRISHAN KUMAR	APPEAL NO. 09 OF 2021(O&M) M/S COUNTRY COLONISERS PVT. LTD. VERSUS SWEETY SHARMA

Memo No. R.E.A.T./2022/ 109

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1ST
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 11th
day of March, 2022.



T. Shaninder Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Date of Filing 11-8-2021

Appeal No. 47 of 2021

Date of Receipt by post X

Appeal No. 47 of 2021

Signature [Signature] / Advocate

Registrar [Signature]

MEMO OF PARTIES

M/s Country Colonisers Pvt. Ltd., Sector 85, SAS Nagar, Mohali, Punjab,
through its authorized signatory/representative Sh. Jasdeep Singh.

...Appellant

Versus

Jasvinder Singh, resident of '594/4, Bishanpura, Zirakpur, District
Sahibzada, Ajit Singh Nagar (Mohali), Punjab' and also at 'House No.102,
Sector 10A, Chandigarh-160011'.

...Respondent

DATE: 11.08.2021

(Tejeshwar Singh, Dewangana Chhillar and Surabhi Grover)

P/1355/2015

D/417/2016

D/6835/2017

Advocates

COUNSEL FOR THE APPELLANT



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BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 36 of 2021

Date of Filing 19.7.2021
Date of Receipt by post 19
Appeal No. 36 of 2021
Signature _____
Registrar De

MEMO OF PARTIES

M/s Country Colonisers Pvt. Ltd., Sector 85, SAS Nagar, Mohali, Punjab,
through its authorized signatory/representative Sh. Jasdeep Singh.

...Appellant

Versus

1. Amarjit Kaur wife of Sh. Arun Kumar Vij, resident of House No.
42/6 Mohalla Swei Garan, Patiala, Punjab.
2. Himanshu Vij son of Sh. Arun Kumar Vij, resident of House No.
42/6 Mohalla Swei Garan, Patiala, Punjab.

...Respondents

DATE: 19.07.2021



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

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 08 of 2021

MEMO OF PARTIES

M/s Country Colonisers Pvt. Ltd., Sector 85, SAS Nagar, (Mohali),
Punjab, through its authorized signatory/representative Sh. Sahil
Sondhi.

...Appellant

Versus

Krishan Kumar r/o House No. 125, Bank Colony, Patiala, Punjab.

...Respondent

DATE: 25.02.2021

(Tejeshwar Singh, Dewangana Chhillar and Surabhi Grover)
P/1355/2015 D/417/2016 D/6835/2017

Advocate

COUNSEL FOR THE APPELLANT



BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJABAppeal No. 09 of 2021**MEMO OF PARTIES**

M/s Country Colonisers Pvt. Ltd., Sector 85, SAS Nagar, Mohali, Punjab,
through its authorized signatory/representative Sh. Sahil Sondhi.


...Appellant**Versus**

Sweety Sharma, House no. 118, Sector 70, Sahibzada Ajit Singh Nagar,
Mohali, Punjab.

...Respondent

PLACE: Chandigarh

DATE: 25.02.2021


(Tejeshwar Singh, Dewangana Chhillar and Surabhi Grover)
P/1355/2015


D/417/2016


D/6835/2017

Advocate

COUNSEL FOR THE APPELLANT



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 47 OF 2021(O&M) M/S COUNTRY COLONISERS PVT. LTD. VERSUS JASVINDER SINGH	APPEAL NO. 36 OF 2021(O&M) M/S COUNTRY COLONIZERS PRIVATE LTD. VERSUS AMARJIT KAUR AND ORS.
APPEAL NO. 08 OF 2021(O&M) M/S COUNTRY COLONISERS PVT. LTD. VERSUS KRISHAN KUMAR	APPEAL NO. 09 OF 2021(O&M) M/S COUNTRY COLONISERS PVT. LTD. VERSUS SWEETY SHARMA

Present: - Mr. Tejeshwar Singh, Advocate for the appellant/promoter (M/s Country Colonisers).
Ms. Manjit Kaur Kotia, Advocate for the respondent in Appeal No. 47 of 2021 and Mr. Sahil Sharma, Advocate for Mr. J.P. Singla, Advocate for the respondent in Appeal No. 47 of 2021 Appeal No.08 of 2021, Appeal No.09 of 2021 and Appeal No.10 of 2021.

These appeals are directed against the order 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.", 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.



APPEAL NO. 08 OF 2021(O&M), APPEAL NO. 09 OF 2021(O&M)

APPEAL NO. 36 OF 2021(O&M), APPEAL NO. 47 OF 2021(O&M)

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The ratio of our order passed in "Appeal No.277 of 2020", would be attracted to the facts of the present case as well.

Accordingly, we deem it appropriate to dispose of the appeals 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 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 **14.03.2022**. Files be consigned to record room.



APPEAL NO. 08 OF 2021(O&M), APPEAL NO. 09 OF 2021(O&M)
APPEAL NO. 36 OF 2021(O&M), APPEAL NO. 47 OF 2021(O&M)

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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.

Photocopy of this order be placed in connected cases.

Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

March 03, 2022
AN



Certified To Be True Copy
T. Chanderjit Singh
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

11/03/2022

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 47 of 2021

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

.....Appellant

Versus

Jasvinder Singh, resident of '594/4, Bishanpura, Zirakpur, District Sahibzada Ajit Singh Nagar (Mohali), Punjab' and also at 'House No.102, Sector 10A, Chandigarh-160011'.

.....Respondent

Appeal No. 36 of 2021

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

.....Appellant

Versus

1. Amarjit Kaur wife of Sh. Arun Kumar Vij, resident of House No. 42/6, Mohalla Swei Garan, Patiala, Punjab; &
2. Himanshu Vij son of Sh. Arun Kumar Vij, resident of House No. 42/6 Mohalla Swei Garan, Patiala, Punjab.

.....Respondents

Appeal No. 9 of 2021

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

.....Appellant

Versus

Sweety Sharma, House no. 118, Sector 70, Sahibzada Ajit Singh Nagar, Mohali, Punjab.

.....Respondent

Appeal No. 8 of 2021



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

.....Appellant

Versus

Krishan Kumar, resident of House No. 125, Bank Colony, Patiala,
Punjab.

.....Respondent

Present: Mr. Tejeshwar Singh, Advocate for the appellant/promoter (M/s
Country Colonisers).
Ms. Manjit Kaur Kotia, Advocate for the respondent in Appeal
No. 47 of 2021 and Mr. Sahil Sharma, Advocate for Mr. J.P.
Singla, Advocate for the respondent in Appeal No. 47 of 2021 Appeal
No.08 of 2021, Appeal No.09 of 2021 and Appeal No.10 of 2021.

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 four appeals
bearing Appeal No. 47 of 2020 (**Country Colonisers Pvt. Ltd.
versus Jasvinder Singh**), Appeal No. 36 of 2020 (**Country
Colonisers Pvt. Ltd. versus Amarjit Kaur and Himanshu Vij**),
Appeal No. 9 of 2021 (**Country Colonisers Pvt. Ltd. versus
Sweety Sharma**) and Appeal No. 8 of 2021 (**Country Colonisers
Pvt. Ltd. versus Krishan Kumar**) against orders dated



Appeals No. 47 of 2021, 36 of 2021, 9 of 2021 & 8 of 2021

6

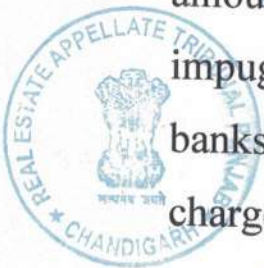
29.04.2021, 30.03.2021, 08.07.2020 and 08.07.2020 all the four passed by Sh. Balbir Singh, Adjudicating Officer (*hereinafter referred to as the AO*) of Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in the complaints bearing AdC No. 15012019, AdC No. 13022019, No. TR/AO/54/2019 (old GC No. 12282019) and AdC No. 10812019 filed on 09.01.2020, 28.08.2019, 21.02.2019 and 26.03.2019 respectively.

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

1.	Appeal No.	47/2021	36/2021	9/2021	8/2021
2.	Complaint No.	15012019	13022019	12282019	10822019
3.	Complaint date	09.01.2020	28.08.2019	21.02.2019	26.03.2019
4.	AO's order dated	29.04.2021	30.03.2021	08.07.2020	08.07.2020
5.	Principal amount (Rs.)	72,84,625	39,07,302	55,14,432	6,18,540
6.	Simple interest	At the SBI highest marginal cost of lending rate* plus 2% on the above said/principal amount from the date of respective payments till realization * "(as on the date of impugned order)", in complaints No. 15012019 & 13022019			
7.	On account of mental agony and litigation expenses (Rs.)	1,25,000	1,25,000	1,25,000	25,000/-

Further, the appellant has been directed to pay the above said amount to the complainant within sixty days from the date of the impugned orders; and it has also been ordered that the loan of the banks obtained by the complainants in these cases, shall be the first charge on the above said amount.

3. The facts have been extracted from Appeal No. 47 of 2021 (**Country Colonisers Pvt. Ltd. versus Jasvinder Singh**).
4. The complaint bearing AdC No. 15012019 has been filed before the Adjudicating Officer by Sh. Jasvinder Singh, in form 'N' under



section 31 read with section 71 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) claiming refund of the amount deposited by the complainant with the appellant along with interest payable under the Act as well as compensation (Rs.2,00,000/- for deficiency in service, Rs.20,000/- pm for rent paid by complainant from the promised date of possession, Rs.10,000/- pm on account of mental harassment, Rs.12,000/- pm on account of physical harassment, Rs.3,00,000/- as the litigation cost besides the opportunity cost due to delay in possession).

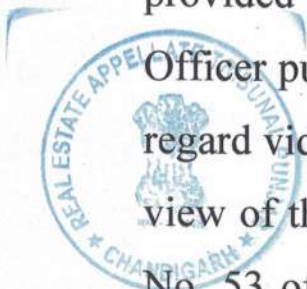
5. Aggrieved by the above said order of the AO dated 29.04.2021 in complaint bearing AdC No. 15012019, the appellant filed Appeal No. 47 of 2021 before this Tribunal and prayed to set aside the impugned order & dismiss the complaint.
6. In the grounds of the aforesaid appeal bearing Appeal No. 47 of 2021, it has inter alia been contended (i) that the complaint is barred by limitation; (ii) that the Adjudicating Officer does not have the jurisdiction to deal with and decide matters involving refund and interest; (iii) that the construction of the unit is complete and possession thereof has been offered after obtaining occupancy certificate; (iv) that if refund was due, then the appellant would be entitled to refund/adjustment of the amount of pre-EMI interest paid by the appellant on behalf of the complainant; (v) that since the project in question is complete, the Act ceases to apply; (vi) the complainant has defaulted in making payments; (vii) the AO has awarded excessive compensation; (viii) that the Act being prospective in its operation can't apply to the present controversy; (ix) that the Bank (HDFC Limited) was not



impleaded; (x) that the complainant has no cause of action to file the complaint; and (xi) that no adjudication has been done on specific legal objections taken by the appellant.

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:

7. 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

- 8.** 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 in the later part of this judgment.
- 9.** It has been contended by the appellant that the complaint is barred by limitation as the same has not been filed within three years from the promised date of possession i.e. 29.12.2015. This contention of the appellant has no locus standi. The respondent-complainant has waited for quite some time with the hope of getting possession of the unit booked by him and ultimately sought refund of the amount deposited by him as per provisions of the Act.
- 10.** Admittedly, Occupancy Certificate was issued on 19.03.2020 for the unit in question and the possession of the apartment was offered on 06.06.2020 (the possession letter was not delivered to the complainant as was apparent from the tracking report, as contended by the complainant). Even after allowing grace period of six months provided for in the agreement dated 29.12.2012, the possession of the unit was to be delivered by 29.12.2015, but the appellant failed to do so. Thus, in terms of section 18(1) of the Act, the appellant is liable on demand (made by the allottee-complainant through his complaint filed on 09.01.2020) to return the amount received by the appellant in respect of the unit with interest at prescribed rate including compensation.
- 11.** The appellant's next contention is that the complainant has defaulted in making timely payments and catastrophically failed to



pay his 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 16.06.2020 to the complaint as well as in his appeal dated 11.08.2021 that as of the date of his aforementioned appeal/reply, an amount of Rs.19,48,964.77 is pending to be paid by the complainant as allegedly detailed in its appeal dated 11.08.2021, which is reproduced below:-

"S. NO	PARTICULARS	AMOUNT	DUE DATE	FULLY PAID ON	APPROX. DELAY AS ON AUGUST 2021
1.	45 Days of Booking	7,46,281/-	14.08.2012	NOT FULLY PAID	9 years
2.	Excavation upto 5 feet	20,84,416/-	15.08.2014	NOT FULLY PAID	7 years
3.	Completion of 4th Roof Slab	25,99,334/-	30.08.2014	NOT FULLY PAID	7 years
4.	Completion of Structure/ Brick Work	26,69,728.77/-	30.09.2015	NOT FULLY PAID	6 years
5.	Completion of Internal Plastering	8,79,103/-	25.07.2019	NOT PAID	2 years
6.	Intimation of Possession	10,69,861/-	21.06.2020	NOT PAID	2 years
	TOTAL DUES	19,48,964/-"			



12.

As the delay in payments, as represented as above by the appellant in his appeal before this Tribunal, on the face of it seems to be serious one, I deem it appropriate to verify the same from the material on record and notice as under:-

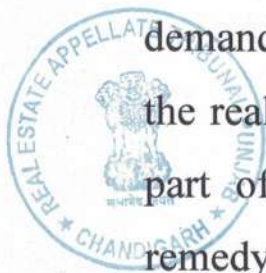
Due date of payment	Amount due (includes outstanding) (Rs.)	Date of payment	Amount paid (Rs.)	Remarks
On booking	5,00,000	27.06.12	5,00,000	
14.08.2012 (45 Days of Booking)	7,46,281	24/27.11.12 Outstandig	7,40,000 6,281	Against bounced cheque dated 10.11.12
15.08.2014 (Excavation upto 5 feet)	20,84,416	08/14.08.14 08/14.08.14 Outstanding	16,28,193 3,86,807 69,416	HDFC paid Pre-EMI interest upto 07/31.08.2016
30.08.2014 (Completion 4th roof slab)	25,99,334	28/30.08.14 28/30.08.14 Outstanding	16,39,400 3,75,600 5,84,333	HDFC paid Pre-EMI interest upto 07/31.08.2016 Letter dated 24.07.15
30.09.2015 (Completion of structure/brick work)	26,69,729	15.10.15 15.10.15 Outstanding	18,46,630 1,67,995 6,55,104	HDFC paid Pre-EMI interest upto 07/31.08.2016 Letter dated 29.06.16
25.07.2019 (Completion of internal plastering)	8,79,103	Outstanding	8,79,103	Demand notice dated 10.07.2019 (Due date of possession was 29.12.2015)
21.06.2020 (Intimation of Possession)	19,48,965			Demand notice dated 06.06.2020 (Complaint dated 09.01.2020 was filed for refund)

- 13.** The above factual picture, that has been prepared from appellant's own documents placed before this Tribunal by himself, belies the contention of the appellant that the complainant catastrophically failed to pay his dues; rather it proves that representation made as above by the appellant before the Authority and this Tribunal as well is catastrophically exaggerated. It may also be noted that (i) after initial 15% of the basic sale price, almost entire remainder of the same was to be disbursed by the Bank on behalf of the complainant directly to the appellant under the tripartite agreement for loan of Rs.65,00,000/- granted under subvention scheme; (ii) that the Bank disbursed Rs.60,44,625/- and thus remaining amount of Rs.4,55,375/- was not disbursed for the reasons best known to



the parties to the tripartite agreement; (iii) that at least payment schedule linked milestones of completion of internal plastering (which, as per appellant's demand notices, happened after almost four years after the completion of structure/brick work) and of intimation of possession were admittedly stretched far beyond the promised date of possession i.e. 29.12.2015; (iv) that the appellant, in his reply dated 16.06.2020, has inter alia contended that subvention period was extended up to the offer of possession vide letter dated 04.08.2016 (Annexure R-9, which has not been placed on record before this Tribunal), but no evidence of payment by the appellant towards his liability arising out of such extension has been brought on record and no claim for adjustment of such additional payment from the amount to be refunded has been raised by the appellant; (v) that such inordinate admitted delay on the part of the appellant is likely to be the reason for non-disbursal of remaining amount of the loan granted; (vi) that the alleged offer of possession dated 06.06.2020 (receipt of which has been denied by the complainant) has been made after the complainant has ultimately opted for the refund through his complaint filed on 09.01.2020; (vii) that the Adjudicating Officer has taken note of appellant's contention of the alleged failure to pay balance amount demanded but brushed the same aside, ostensibly aware of most the realities as above; and (viii) that for delay in payments on the part of complainant, if any, the appellant could have availed remedy as per provisions of the agreement and the applicable law.

- 14.** From the foregoing three paragraphs, it emerges that the appellant has misrepresented the picture regarding payments not only before the Adjudicating Officer but also repeated the same before this



Tribunal in order to mislead it. Thus, the appellant has wasted valuable time and therefore the appellant is liable to pay some costs for such misrepresentation. Hence, the appellant is directed to pay an amount of Rs.25,000/- to this Tribunal as costs on this account.

15. The appellant has also contended in its appeal that if refund was due to the complainant, then the appellant would be entitled to refund/adjustment of the amount of pre-EMI interest paid by it on behalf of the complainant under the tripartite agreement and settlement deed, amounting to Rs.9,30,402/- i.e. the aggregate of pre-EMI interest up to 07/31.08.2016 components amounting to Rs.3,86,807/-, Rs.3,75,600/- and Rs.1,67,995/-, which were deducted by the Bank while disbursing the first, the second and the third tranches of loan amounting to Rs.20,15,000/-, Rs.20,15,000/- and Rs.20,14,625/- and thereby issuing DDs/cheques etc dated 08.08.2014, 28.08.2014 and 15.01.2015 only for remaining amounts of Rs.16,28,193/-, Rs.16,39400/- and Rs.18,46,630/-.

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

17. 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 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. However, we should not lose sight of the fact that the appellant-promoter, who has already borne the liability of interest (termed in the tripartite agreement as the "Assumed Liability") up to a certain period (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.

18. For aforementioned three tranches of loan disbursed, the complainant-allottee has become liable to pay interest to the Bank with effect from 08.08.2016/01.09.2016 on disbursed loan amount aggregating to Rs.60,44,625/- as the appellant has not borne the liability of payment to or deduction by the Bank any interest amount after 07/31.08.2016.

19. Hence, I am of the view that (i) refund of the amounts of Rs.5,00,000/- and Rs.7,40,000/-, that the complainant himself paid on 27.06.2012 and 24/27.11.2012 respectively, should be allowed to the complainant along with interest thereon with effect from their respective dates of payment till realization; and (ii) refund of an amount of Rs.60,44,625/-, that was disbursed by the Bank on behalf of the complainant, should be allowed to the complainant along with interest thereon with effect from 08.08.2016/01.09.2016 (i.e. date or dates from which the complainant paid or became liable to pay interest to the Bank on the loan disbursed) till realization.



20. 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.**).
21. 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 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.
22. 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.
23. The contention that no adjudication has been done on specific legal objections taken by the appellant is frivolous.
24. In view of above, all the four appeals are partially accepted only to the following extent:-



- (i) The refund of the amounts, that the complainants themselves paid, should be allowed to the complainants along with interest thereon with effect from their respective dates of payment till realization; and the refund of amounts disbursed by the banks on behalf of the complainants, should be allowed to the complainants along with interest thereon with effect from respective dates from which the complainants became liable to pay interest to the banks on the loan disbursed, till realization.
- (ii) 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.**). All the four cases are accordingly remanded back to the Adjudicating Officer **only for re-adjudging the compensation.**

25. The appellant is directed to deposit an amount of Rs.25,000/-, as costs for misrepresentation as detailed above, with this Tribunal within four weeks from the date of this order.

26. The appeals are accordingly disposed off. Files be consigned to record room and a copy of this order be filed in the files of the appeals 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 03, 2022

Certified To Be True Copy
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
11/03/2022