

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

Subject: -

**Appeal No. 126 of 2021**

1. ANIL VIVIAN SINGH, S/O ALBERT SINGH PERMANENT R/O FLAT NO.303, BLOCK A-1, NIRMAL CHHAYA TOWERS, VIP ROAD ZIRAKPUR THROUGH MY SPECIAL ATTORNEY SH. GAURAV ANAND R/O FLAT NO.411, 4<sup>TH</sup> FLOOR, ONYXE PARAISO, PATIALA ROAD, ZIRAKPUR, PUNJAB-140603.
2. ANITA JULIENT SINGH SINCE DECEASED THROUGH HER ONLY LEGAL HEIR SH. ANIL VIVIAN SINGH R/O FLAT NO.303, BLOCK-A-1, NIRMAL CHHAYA TOWERS, VIP ROAD ZIRAKPUR.  
ANIL SINGH .....Appellants

Versus

1. M/S ATS ESTATES PRIVATE LIMITED 711/92, DEEPALI NEHRU PLACE, NEW DELHI.
2. MR. ADITYA SINGH PAHWA, 711/92, DEEPALI NEHRU PLACE, NEW DELHI.

.....Respondents

Memo No. R.E.A.T./2022/ 200

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 29<sup>th</sup> day of April, 2022.

*Thamara Kaur*

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



**IN THE PUNJAB REAL ESTATE APPELLATE TRIBUNAL,  
AT CHANDIGARH**

**APPEAL NO. 126 OF 2021  
ARISING OUT OF COMPLAINT NO. GC No.1076/ 2018  
DATE OF DECISION: 13.10.2021**

**MEMO OF PARTIES**

1. Anil Vivian Singh, S/o Albert Singh Permanent R/o Flat No. 303, Block A-1, Nirmal Chhaya Towers, VIP Road Zirakpur through my Special Attorney Sh. Gaurav Anand R/o Flat no.411, 4<sup>th</sup> Floor, Onyx Paraiso, Patiala Road, Zirakpur, Punjab-140603.
2. Anita Juliet Singh since deceased through her only legal heir Sh. Anil Vivian Singh R/o Flat No. 303, Block A-1, Nirmal Chhaya Towers, VIP Road Zirakpur.

....APPELLANT'S


-VERSUS-

1. M/s ATS Estates Private Limited 711/92, Deepali Nehru Place, New Delhi.
2. Mr.Aditya Singh Pahwa, 711/92, Deepali Nehru Place, New Delhi.

... RESPONDENT'S

DATE: 08-12-2021  
PLACE: CHANDIGARH



  
MANDEEP SINGH KHILLAN & SURMEET KAUR  
(P-341/04)

  
PH/802/2021  
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REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 126 of 2021

1. ANIL VIVIAN SINGH, S/O ALBERT SINGH PERMANENT R/O FLAT NO.303, BLOCK A-1, NIRMAL CHHAYA TOWERS, VIP ROAD ZIRAKPUR THROUGH MY SPECIAL ATTORNEY SH. GAURAV ANAND R/O FLAT NO.411, 4<sup>TH</sup> FLOOR, ONYXE PARAIISO, PATIALA ROAD, ZIRAKPUR, PUNJAB-140603.
2. ANITA JULIENT SINGH SINCE DECEASED THROUGH HER ONLY LEGAL HEIR SH. ANIL VIVIAN SINGH R/O FLAT NO.303, BLOCK-A-1, NIRMAL CHHAYA TOWERS, VIP ROAD ZIRAKPUR.

.....Appellants

Versus

1. M/S ATS ESTATES PRIVATE LIMITED. 711/92, DEEPALI NEHRU PLACE, NEW DELHI.
2. MR. ADITYA SINGH PAHWA, 711/92, DEEPALI NEHRU PLACE, NEW DELHI.

.....Respondents

\*\*\*

Present: Mr. Mandeep Singh Khillan, Advocate for the appellants.

Mr. Paritosh Vaid, Advocate for the respondents.

**CORAM:** 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:** (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)  
(MAJORITY VIEW)

1. This appeal is directed against the order dated 13.10.2021, passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab.
2. 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.
3. The ratio of our order passed in "Appeal No.277 of 2020", would be attracted to the facts of the present case as well.
4. Accordingly, we deem it appropriate to dispose of the appeal with a liberty to the complainant to move an appropriate application in Form M seeking refund & interest and Form N seeking compensation before the competent Authority/ Adjudicating Officer.



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5. 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.
6. 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.
7. Parties are directed to appear before the Real Estate Regulatory Authority, Punjab on 12.05.2022. Files be consigned to record room.

Sds-  
JUSTICE MAHESH GROVER (RETD.)  
CHAIRMAN

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



April 18, 2022  
AN

Certified To Be True Copy  
*Manish Kumar*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

29/04/2022

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REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

**Appeal No. 126 of 2021**

1. Anil Vivian Singh, S/o Albert Singh Permanent R/o Flat No. 303, Block A-1, Nirmal Chhaya Towers, VIP Road Zirakpur through his Special Attorney Sh. Gaurav Anand R/o Flat no.411, 4th Floor, Onyx Paraiso, Patiala Road, Zirakpur, Punjab-140603; &
2. Anita Juliet Singh since deceased through her only legal heir Sh. Anil Vivian Singh, R/o Flat No. 303, Block A-1, Nirmal Chhaya Towers, VIP Road Zirakpur

.....Appellants

Versus

3. M/s ATS Estate Private Limited 711/92, Deepali Nehru Place, New Delhi; &
4. Mr. Aditya Singh Pahwa, 711/92, Deepali Nehru Place, New Delhi.

.....Respondents

**Present:** Mr. Mandeep Singh Khillan, Advocate for the appellants.

Mr. Paritosh Vaid, 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)**



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1. By this order, I will dispose off above mentioned appeal bearing Appeal No. 126 of 2021 (**Anil Vivian Singh & Anr. versus M/s ATS Estate Private Limited & Anr.**) against order dated 13.10.2021 passed by Sh. Balbir Singh, Adjudicating Officer (*hereinafter also referred to as the AO*) of the Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in the complaint bearing No. GC1213 of 2019 instituted on 14.03.2019.
2. The complaint has partly been accepted by the Adjudicating Officer to the following extent and heads:-

1.	Principal amount	Rs.47,52,617/-
2.	Simple interest	At the SBI highest marginal cost of lending rate (as on the date of the impugned order) plus 2% on the above amount from the date of respective payments till realization
3.	On account of mental agony and compensation etc.	Rs.1,25,000/-

The respondent has been directed to pay the above said amount to the appellant-complainant within sixty days from the date of the impugned order and it has also been ordered that the amount if any already paid by the respondent to the appellant-complainant on account of compensation for delay in delivery of possession shall be set off against above said amount; and it has further been ordered that home loan, obtained by the complainants in this case from the HDFC bank, shall be first charge on the above said amount.



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3. As per paragraph 12 of the impugned order dated 13.10.2021, the complaint was initially filed before the Authority in Form 'M' but the Authority, in the light of the decision of this Tribunal in Appeal No. 53 of 2018 (**Sandeep Maan versus Real Estate Regulatory Authority and others**) decided on 27.02.2019, transferred the complaint to the Adjudicating Officer holding that the complaint for the relief of refund of the amount, interest and compensation was within the purview of the Adjudicating Officer; and the complainant also filed formal amended complaint in Form 'N' by only changing the Form 'M' and addressing the same to the Adjudicating Officer and on behalf of the respondent also his authorized representative made a statement that written reply already filed to the unamended complaint be treated as written reply to the amended complaint and no fresh written reply was to be filed.
4. The complaint in Form 'N' (changed from Form 'M' as mentioned above) was filed by the appellants before the Adjudicating officer on 14.03.2019 under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) and Rule 37(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*) claiming from the respondents (i) refund of the complete amount deposited by the complainants along with interest as provided in section 18 of the Act and Rule 16 of the Rules; (ii) compensation @ 24% on the total amount principal plus interest there upon from 06.11.2018 till date of final payment because the respondents





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should have paid the complainants the principal amount along with the interest thereon on or before 06.11.2018 as per the provisions of section 18 of the Act read with Rule 16 and 17 of the Rules which they failed to do; (iii) Rs.50,000/- as legal costs; and (iv) Rs.4 lacs for mental agony and stress.

5. Aggrieved by the above said order dated 13.10.2021 of the Adjudicating Officer, the appellants filed appeal dated 08.12.2021, bearing Appeal No. 126 of 2021, before this Tribunal and prayed to modify the impugned order dated 13.10.2021 on the following grounds:-

- (a) To pass an appropriate order setting aside part of the order of the Adjudicating Officer ordering refund of principal amount and interest payable thereon under section 18(1) of the Act and remanding the case to the Authority for fresh adjudication on the issue in view of the decision dated 11.11.2021 of Hon'ble Supreme Court of India in M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP & Ors. etc;
- (b) To pass an order enhancing the compensation as prayed for or as this Tribunal may deem fit and proper in the interest of justice and equity;
- (c) To pass any other order or directions this Tribunal deems fit and proper in the interest of the appellants.



6. The appellant has inter alia contended in the grounds of the appeal (i) that order passed by the Adjudicating Officer to refund the

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amount deposited and interest thereon is without jurisdiction in view of aforesaid judgment dated 11.11.2021 passed by the Hon'ble Supreme Court; (ii) that the compensation amount of Rs.1,25,000/-, as determined by the Adjudicating Officer after adjudicating upon the reliefs sought by the complainants in their complaint in respect of the compensations, is not correct as per the provisions of sections 18(1) and 72 of the Act; (iii) that in view of section 18(1) of the Act and the Rule 16 & Rule 17 of the Rules, the respondents were bound to refund their money along with interest at the prescribed rate (SBI highest MCLR as on 01.08.2018 i.e. 8.45% + 2% instead of as on the date of the impugned order dated 13.10.2021 as ordered therein i.e. 7.30% + 2%) within 90 days from the date of such demand raised by the complainants vide their letter dated 06.08.2018 with the respondents i.e. by 06.11.2018; (iv) that by not refunding the principal amount of Rs.47,52,617/- along with the interest amount of Rs.21,31,035/- thereon that has accrued up to 06.11.2018, the promoter has continued to use the funds beyond 06.11.2018 while depriving the allottee of legitimate use of the same but no compensation for/interest on non-payment of interest amount of Rs.21,31,035/- that accrued on the principal amount @ 8.45% up to 06.11.2018, has been granted vide the impugned order; (v) that section 72 of the Act provides that the adjudicating Officer while deciding the quantum of compensation should consider among other factor "***the amount of loss caused as a result of the default;***" and in the present case the loss caused is Rs.6,46,725/- being the interest on



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Rs. 21,31,035/- @ 10.45% for the period from 06.11.2018 to 13.10.2021 and a further sum of Rs.610.12 for each day thereafter.

**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 PRESENT APPEAL**

8. First of the two specific reliefs sought by the appellant in their present appeal is to set aside part of the impugned order dated 13.10.2021 passed by the Adjudicating Officer ordering refund of principal amount and interest payable thereon under section 18(1) of the Act and remanding the case to the Authority for fresh adjudication on the issue in view of the decision dated 11.11.2021 of Hon'ble Supreme Court of India in M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP & Ors. etc.
9. In this regard, it has been contended by the appellant that order passed by the Adjudicating Officer to refund the amount deposited and interest thereon is without jurisdiction in view of aforesaid judgment dated 11.11.2021 passed by the Hon'ble Supreme Court and has cited the contents of paragraph 86 of afore-mentioned judgment dated 11.11.2021.
10. Taking notice of reference of circular dated 05.03.2021 of the Authority in the another order dated 15.04.2021 of the Adjudicating Officer in Appeal No. 130 of 2021 (**Country Colonisers Pvt. Ltd. versus Rupinder Kaur Narang and others**) 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, 120 & 116 (in this sequence) read with section 81 of the Act, that



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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 afore-mentioned 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 7 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 13.10.2021, 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.

**11.**

Hence, in my opinion, there is no need to set aside the part of the impugned order dealing with refund of the amount deposited and interest thereon and remand it to the Authority on the grounds of jurisdiction.



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- 12.** The second specific relief sought by the appellants in the present appeal is for enhancing the compensation as prayed for or as this Tribunal may deem fit and proper in the interest of justice and equity.
- 13.** In support of aforementioned second relief sought by the appellant in the present appeal, it has been contented that (i) that the compensation amount of Rs.1,25,000/-, as determined by the Adjudicating Officer after adjudicating upon the reliefs sought by the complainants in their complaint in respect of the compensations, is not correct as per the provisions of sections 18(1) and 72 of the Act; (ii) that in view of section 18(1) of the Act and the Rule 16 & Rule 17 of the Rules, the respondents were bound to refund their money along with interest at the prescribed rate (SBI highest MCLR as on 01.08.2018 i.e. 8.45% + 2%, instead of as on the date of the impugned order dated 13.10.2021 as ordered therein i.e. 7.30% + 2%) within 90 days from the date of such demand raised by the complainants vide their letter dated 06.08.2018 with the respondents i.e. by 06.11.2018; (iii) that by not refunding the principal amount of Rs.47,52,617/- along with the interest thereon amounting to Rs.21,31,035/- accrued up to 06.11.2018, the promoter has continued to use the funds beyond 06.11.2018 while depriving the allottee of legitimate use of the same but no compensation for/interest on non-payment of interest amount of Rs.21,31,035/- that accrued on the principal amount @ 8.45% up to 06.11.2018, has been granted vide the impugned order; (v) that section 72 of the Act provides that the adjudicating



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Officer while deciding the quantum of compensation should consider among other factor "*the amount of loss caused as a result of the default;*" and in the present case the loss caused is Rs.6,46,725/- being the interest on Rs. 21,31,035/- @ 10.45% for the period from 06.11.2018 to 13.10.2021 and a further sum of Rs.610.12 for each day thereafter.

14. 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.**).
15. Therefore, I am of the view that the case is liable to be remanded back to the Adjudicating Officer only for re-adjudging the compensation.
16. In the grounds for praying for enhancing the compensation, it has also been contended that interest at SBI highest MCLR (i.e. 7.30% as on the date of impugned order i.e. as on 13.10.2021 as ordered therein) plus 2% has been allowed by the Adjudicating Officer, instead of allowing interest at SBI highest MCLR of Rs.8.45% as on 01.08.2018 (i.e. the one prevailing on the date when the complainants informed the respondents about their withdrawal from the project and sought refund of their money along with interest) plus 2%.



17. Rule 16, titled “Interest payable by the promoter and the allottee”, of the Rules reads as under:-

*“16. Interest payable by the promoter and the allottee.- The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent:*

*Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use, it would be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”*

18. Rule 17, titled “Timelines for refund”, of the Rules reads as under:-

*“17. Timelines for refund.- Any refund of monies along with the applicable interest and compensation, if any, payable by the promoter in terms of the Act or the rules and regulations made thereunder, shall be payable by the promoter to the allottee within ninety days from the date on which such refund along with applicable interest and compensation, if any, becomes due.”*

19. Section 18(1) of the Act inter alia provides that if a promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, he shall be liable **on demand** to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest





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at such rate as may be prescribed in this behalf including compensation in the manner as provided under the Act.

- 20.** Plain reading of the above reproduced Rule 16 of the Rules, in my opinion, suggests that as the SBI highest MCLR is a variable rate, the applicable rate(s) should be the one/ones that is/are prevailing during the time for which interest is to be calculated.
- 21.** However, the Authority, vide its circular No. RERA.PB.2020/ENF/22 dated 17.09.2020, has inter alia held that *“2. It has been seen that the State Bank of India's Highest Marginal Cost of Lending Rate (MCLR) is generally reviewed and revised on a monthly basis. If the interest to be paid by the promoter or the allottee were also to be held to vary with every such revision it would be extremely difficult to calculate the total amount to be paid because various rates of interest would have to be applied from time to time. It would also be unrealistic to expect the authorities such as the District Collectors to check on the prevalent MCLR while effecting recovery of amounts as arrears of land revenue. On the other hand, it is also seen that in an era of declining interest rates, adopting a single MCLR might result in a party getting less interest than would be the case if the various rate of interest of MCLR were to be adopted from time to time.”*
- 22.** Therefore, after study of judicial pronouncements of various authorities on the subject, the Authority decided vide its aforesaid circular dated 17.09.2020 that *“the interest payable under Rule 16 of the Rules would be the State Bank of India's highest Marginal*



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*Cost of Lending Rate prevalent on the date of passing of the order regarding payment of interest plus 2%”.*

- 23.** In my opinion, in the present era of computer age, it is not difficult at all to compute the interest with variable rate. In fact, I have noticed that many promoters, who while challenging the orders of the Authority/Adjudicating Officer wherein interest on the amount of refund has been allowed at the SBI highest MCLR prevailing from time to time, have placed on record before this Tribunal the calculation sheets to support the amount to be deposited by them in compliance of the proviso under section 43(5) of the Act in accurate manner.
- 24.** Even if the computation of the interest amount with variable interest rates is generally lengthier than the one with a single rate, allowing the variable SBI highest MCLR as prevailing from time to time during the period for which interest is to be calculated shall not only be more appropriate in the spirit of the Rule 16 of the Rules but also none of the parties shall be aggrieved against it because of variations (decline or rise) in such rates from time to time.
- 25.** Another repercussion arising out of adoption of single SBI highest MCLR prevailing as on the date of the judgment/order by the Authority/Adjudicating Officer is being illustrated hereby.
- 26.** Some other complaint had been adjudicated by a single member bench, who, vide its order dated 19.07.2019, had inter alia directed the promoter to pay interest w.e.f. 26.07.2015 till the date of offer



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of possession as per SBI highest MCLR (*without specifically mentioning any date for such rate*) + 2%, out of which interest up to 19.07.2019 was to be paid by 19.09.2019. As no specific single date for taking MCLR was mentioned and as aforesaid circular dated 17.09.2020 of the Authority was not in existence at that time, obviously, variable SBI highest MCLRs prevailing from time to time during the period for which interest was to be calculated, were to be considered for calculation of interest.

**27.** This order dated 19.07.2019 of the single member bench was quashed by Hon'ble High Court of Punjab and Haryana vide order dated 16.10.2020 and declaring it to be without jurisdiction, was remanded to the Authority constituted in accordance with section 21 of the Act. Now, Hon'ble Supreme Court of India, in its judgment dated 11.11.2021 in UP matters, has inter alia held that “--- *the power of delegation under Section 81 of the Act by the authority to one of its member for deciding applications/complaints under Section 31 of the Act is not only well defined but expressly permissible and that cannot be said to be de hors the mandate of law.*”.

**28.** Meanwhile, the full Bench of the Authority, while disposing off that complaint (that was earlier decided on 19.07.2019 by the single member bench), vide its order dated 07.04.2021, has inter alia directed the promoter to pay interest @ 9.3% (that day's SBI highest MCLR as on 07.04.2021 i.e. 7.30% + 2%) from 25.07.2015 in the that complaint till two months after the date of offer of possession (which, for that complaint, ends on 13.04.2020



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as claimed by the promoter in the calculation sheet of the amount of the pre-deposit in compliance to proviso under section 43(5) of the Act).

- 29.** Now, let us compare the interest payable by the promoter to the complainant in aforesaid complaint in various scenarios. As seen from the website of the State Bank of India, historical data of the SBI MCLR is available only from 01.04.2016 when prevailing highest MCLR was 9.35%. Therefore, highest MCLR for prior period during 26.07.2015 to 31.03.2016 has also been taken as 9.35% for said comparison. The following table depicts the comparison:-

As calculated up to	Interest payable with MCLR variable* (1 <sup>st</sup> scenario)	Interest payable with MCLR as on 19.07.2019 (2 <sup>nd</sup> scenario)	Interest payable with MCLR as on 07.04.2021 (3 <sup>rd</sup> scenario)
13.02.2020	54,16,953	52,79,340	46,31,874
19.07.2019	47,17,400	45,90,438	40,27,460

\* As prevailing from time to time during the period for which interest is calculated.

- 30.** In the above table, the 1<sup>st</sup> scenario corresponds to the order dated 19.07.2019 of the single member bench of the Authority; the 2<sup>nd</sup> scenario also corresponds to the order dated 19.07.2019 of the single member bench of the Authority but payable interest is calculated with the single SBI highest MCLR as on the date of that order; and the 3<sup>rd</sup> scenario corresponds to the order dated 07.04.2021 of the full bench of the Authority.

- 31.** From above illustration, it is evident that though the single member bench as well as the full bench of the Authority, both have allowed interest from the same date on the same amount deposited by the allottee with the promoter, yet in case of order dated 07.04.2021 of the full bench of Authority not only payment of interest up to



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19.07.2019 has been delayed by more than one and half years but the quantum of interest payable up to 19.07.2019 as well as that up to 13.02.2020 as per order dated 19.07.2019 of the single member (both with variable MCLR as well as with MCLR on the date of order) has decreased considerably when switched over to the one as per order dated 07.04.2021 of the full bench of the Authority (with MCLR on the date of order).

- 32.** Therefore, I deem it appropriate to remand the case to the Authority to review the impugned order dated 13.10.2021 only to the extent of rate of interest/MCLR, keeping in view the above facts of present case as well the illustration.
- 33.** Hence, present appeal is partly accepted to the extent that the case is remanded to (i) the Authority to review the impugned order only in respect of rate of interest/MCLR; and (ii) ~~to~~ the Adjudicating Officer to only re-adjudge the quantum of compensation 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.**).
- 34.** 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)

April 18, 2022



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Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh  
29/04/2022