

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.217 of 2019  
Date of Decision: 23.04.2021**

Pawan Kumar s/o Shri Ram Niwas, Resident of V.P.O. Pandwala Kalan, near Holi Chowk, New Delhi presently residing at G-106A, Second Floor, South City-II, Gurugram.

Appellant

Versus

M/s Landmark Apartments Pvt. Ltd. having its registered office at 1-8, C-R, Park, New Delhi-110019 & also at Plot No.65, Sector-44, Gurugram-122002 through its Director Sandeep Chhillar.

Respondent

**CORAM:**

Justice Darshan Singh (Retd.)  
Shri Inderjeet Mehta  
Shri Anil Kumar Gupta

Chairman  
Member (Judicial)  
Member (Technical)

**Argued by:** Shri Pankaj Kumar Dua, Advocate, Learned Counsel for appellant.  
Shri Shubhnit Hans, Advocate, Learned Counsel for the respondent.

**ORDER:**

**JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:**

The present appeal has been preferred under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') against the order dated 22.11.2018 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), vide which Complaint No.440 of 2018 filed by the appellant/complainant was disposed of by granting liberty to the appellant to pursue the matter with regard to getting assured

return as per Memorandum of Understanding (MoU) by filing case before the appropriate forum/Adjudicating Officer.

2. The appellant had booked a shop measuring 500 sq. ft. in the project of the respondent/promoter in the name and style of 'Landmark Cyber Park' in Sector-67, Gurugram. The respondent had promised the appellant an assured return of Rs.25,960/- per month payable quarterly till the delivery of possession and after completion of the project for payment of rent @ Rs.55/- per sq. ft. for a period of nine years. The MoU was executed on 09.09.2008. The respondent failed to deliver possession of the unit till date with an inordinate delay of more than ten years. The respondent/promoter also stopped paying the assured return to the appellant w.e.f. the month of September, 2013. The appellant had paid a total sum of Rs.25,96,000/- i.e. the total sale consideration. Thus, the appellant filed complaint seeking the relief of refund of the total sale consideration of Rs.25,96,000/- along with interest @ 18% p.a. The appellant has also sought the recovery of the assured returns of Rs.70,092/- on quarterly basis w.e.f. July, 2013 till the date of possession or till the filing of the present complaint.

3. Respondent contested the complaint on the ground inter alia that the present complaint is not maintainable before the learned Authority and is liable to be decided by the Adjudicating Officer under Section 71 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017

(hereinafter called 'the Rules') and not by the Authority. It was further pleaded that as per terms and conditions of the MoU, the respondent had agreed to pay a sum of Rs.25,960/- as assured return per month payable quarterly till the date of possession or three years. The respondent further pleaded that the assured returns amounting to Rs.8,39,232/- for the period of three years have been paid. The respondent has also paid a sum of Rs.5,27,694/- in excess i.e. for an additional period of 1.5 years i.e. till 09.06.2013. As per terms of the MoU, the appellant was eligible for assured returns till three years or the date of possession. Therefore, the respondent is liable to return the excess amount of Rs.5,27,694/-. It was further pleaded that the nature of relief sought by the appellant is in the form of specific performance of the contract for which the learned Authority had no jurisdiction and the appropriate forum can only be the Civil Court. It was further pleaded that the appellant had wilfully agreed to the terms and conditions of the MoU and is now trying to wriggle out at the belated stage. It was further pleaded that the project was completed in the year 2015 and the respondent has already applied for issuance of Occupation Certificate. It was also pleaded that in the similar matter of Complaint No.141 of 2018 titled as 'Bhimjeet Vs. Landmark Apartments Pvt. Ltd.' the complaint was dismissed by the learned Authority. With these pleas, the respondent pleaded for dismissal of the complaint.

4. After hearing learned counsel for the parties and appreciating the material on record, the learned Authority while relying upon its decision in complaint no.141 of 2018 titled as 'Brhimjeet Vs. Landmark Apartments Pvt. Ltd.' dislodged the appellant with liberty to pursue the matter with regard to get the assured return as per MoU by filing a case before the appropriate forum/Adjudicating Officer.

5. Hence this appeal.

6. It is pertinent to mention that during the pendency of the present appeal, the appellant moved an application restricting his claim only for refund of the principal amount along with interest within the provisions of the Act. The said application was allowed by this Tribunal vide order dated 03.03.2021 and the claim for assured return was waived of. Thus, now the appellant has restricted his claim only for refund of the amount deposited by him with the respondent/promoter along with interest as per the provisions of the Act and the rules framed thereunder and he has given up the claim with respect to the assured return.

7. We have heard Shri Pankaj Dua, Advocate, learned counsel for the appellant, Shri Shubhnit Hans, Advocate, learned counsel for the respondent and have carefully perused the record of the case.

8. The complaint filed by the appellant has been dismissed by the learned Authority relying upon their previous

orders dated 07.08.2018 passed in complaint no.141 of 2018 titled as “Brhimjeet versus M/s Landmark Apartments Pvt. Ltd.” In that case the learned Authority has taken the view that claim for assured return is a civil matter which does not fall within the purview of the Act.

9. Learned counsel for the appellant has brought on record the copy of the order dated 14.12.2018 passed by the learned Authority in complaint no.664 of 2018 titled as “Harish Gupta and another vs. M/s Landmark Apartment Pvt. Ltd.” In that case also, there was similar Memorandum of Understanding (MoU) entered into between the parties. There was also a clause regarding payment of assured return to be paid to the buyer for three years and in Harish Gupta and another case (supra), the learned Authority has granted the relief of refund of the amount. By relying upon the findings of the learned Authority in Harish Gupta and another’s case (Supra), learned counsel for the appellant has contended that the appellant has given up the claim with respect to the recovery of the assured return and now the appellant is pursuing his case only for refund of the principal amount along with interest as per the provisions of the Act.

10. From the perusal of the complaint filed by the appellant, it comes out that the appellant has claimed the relief of recovery of the principal amount i.e. total sale consideration deposited by him along with interest @ 18% per annum. The

appellant has also claimed the recovery of the assured return of Rs.70,092/- on quarterly basis due from July, 2013 till the date of possession or till the date of filing the complaint. So, the appellant has claimed two reliefs in the complaint. Firstly, for refund of the amount deposited by him along with interest and secondly the recovery of the assured return alleged to have become due. The learned Authority has dismissed the complaint only dealing with the second relief with respect to the assured return. The first relief sought by the appellant with respect to refund of the amount deposited by the appellant along with interest has not been dealt with at all by the learned Authority in the impugned order.

11. As already mentioned the complaint filed by the appellant has been dismissed simply on the ground that the dispute regarding recovery of assured return is a civil dispute and is beyond the purview of the Act. During the pendency of the present appeal, the appellant has given up the claim regarding assured return and now the appellant is pursuing the present case only with respect to refund of the principal amount along with interest as per the provisions of the Act. It is settled principle of law that the appeal is the continuation of the suit. So, the relief of assured return which was the sole cause for dismissal of the complaint filed by the appellant no more subsists. The only relief now being claimed by the appellant is refund of the amount deposited by him along with interest which

is perfectly within the purview of the Act. The learned Authority has itself granted the relief of refund along with interest after deducting the amount of assured return in Harish Gupta and another's case (supra) vide order dated 14.12.2018.

12. The issue regarding refund has not been dealt with at all by the learned Authority in the impugned order. Thus, the case will require retrial.

13. Thus, keeping in view our aforesaid discussion the present appeal is hereby allowed. The impugned order dated 22.11.2018 passed by the learned Authority is hereby set aside. The case is remitted to the learned Authority for fresh decision of the case in accordance with law.

14. The parties are directed to appear before the learned Authority on 10<sup>th</sup> May, 2021.

15. Copy of this order be communicated to learned counsel for the parties/parties and the learned Authority for compliance.

16. File be consigned to the records.

Announced:  
April 23, 2021

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)