

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.218 of 2019
Date of Decision: 23.04.2021**

Sharwan Kumar s/o late 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.)	Chairman
Shri Inderjeet Mehta	Member (Judicial)
Shri Anil Kumar Gupta	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.439 of 2018 filed by the appellant/complainant was disposed of with the following directions:-

“(i) As already decided in complaint No.141 of 2018 titled as Brhimjeet Versus M/s Landmark Apartments Pvt. Ltd. no case is made out. Counsel for respondent has given a Supreme Court Judgment dated 25.7.1997 vide which he has pleaded the doctrine of precedent. Since the authority has taken a view much earlier as stated above, the authority cannot go beyond the view already taken.”

2. As per averments in the complaint, on 03.09.2008 the appellant/complainant booked a shop measuring 500 sq. ft. in the project of the respondent/promoter known as ‘Landmark Cyber Park’ in Sector-67, Gurugram, for a total sale consideration of Rs.25,96,000/-. At the time of booking, the respondent had promised to pay an assured return of Rs.25,960/- per month till the delivery of possession and also assured that they will complete the project within three years. After completion, they will pay the rent @ Rs.55/- per sq. ft. for a period of nine years. The Memorandum of Understanding (MoU) was executed on 09.09.2008. The appellant has paid the total sale consideration of Rs.25,96,000/-. The completion of the project has been delayed and even the super structure was not completed within the period of three years. The appellant has waited for more than nine years. The respondent/promoter even stopped giving the assured return to the appellant in the month of September, 2013. Hence, the appellant filed complaint before the learned Authority to seek

the relief of refund of the total sale consideration of Rs.25,96,000/- paid by him with interest @ 18% per annum and also sought recovery of the assured return of Rs.70,092/- on quarterly basis due with effect from July, 2013 till the date of possession or till the date of filing the complaint. It was also prayed that the respondent be held liable for not getting the project registered as per the provisions of the Act and the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called 'the Rules').

3. Respondent contested the complaint on the ground inter alia that the matter in dispute was to be adjudicated by the Adjudicating Officer and not by the Authority. It was further pleaded that the respondent had agreed to pay a sum of Rs.25,960/- per month as an assured return payable on quarterly basis till the date of possession or three years. The respondent had not only paid the assured return amounting to Rs.8,57,628/- for a period of three years by 09.09.2011 but also paid a sum of Rs.4,90,644/- in excess for the period of almost 1.5 years till 09.06.2013. The appellant is liable to the refund the excess amount of Rs.4,90,644/- besides clearing the due amount of Rs.4,27,450/-. It was further pleaded that as the appellant is seeking compensation which is in the nature of specific performance of the contract for which the learned Authority has no jurisdiction and the appropriate forum is the Civil Court. It was further pleaded that apart

from seeking refund, the complaint also pertained for compensation and interest. So, the complaint was required to be filed before the Adjudicating Officer as per rule 29 of the Rules read with sections 31 and 71 of the Act and not before the 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 dispose of the complaint with the directions reproduced in the upper part of the judgment.

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 10th 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)

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Judgment - Haryana Real Estate Appellate Tribunal