



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CWP-29967-2024 (O&M)
Date of decision: 07.11.2024**

M/s. Landmark Apartments

...Petitioner

VERSUS

Permanent Lok Adalat (Public Utility Services) Gurugram and Ors.

...Respondents

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**CWP-30074-2024 (O&M)
Date of decision: 07.11.2024**

M/s. Landmark Apartments

...Petitioner

VERSUS

Permanent Lok Adalat (Public Utility Services) Gurugram and Ors.

...Respondents

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**CWP-30078-2024 (O&M)
Date of decision: 07.11.2024**

M/s. Landmark Apartments

...Petitioner

VERSUS

Permanent Lok Adalat (Public Utility Services) Gurugram and Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Karanvir Hooda, Advocate for the petitioner(s).

VINOD S. BHARDWAJ, J. (Oral)

1. Raising common questions of law and fact these three writ



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petitions are filed against the awards passed by the Permanent Lok Adalat (Public Utility Services), Gurugram in Case No.2821/2016; No. 2822/2016 and No. 2820/2016 respectively. The same are being decided by a common judgment. The facts are, however, being extracted from **CWP-29967-2024** titled as **M/s. Landmark Apartments Vs. Permanent Lok Adalat (Public Utility Services) Gurugram and Ors.**

2. The petitioner is a juristic entity dealing in the business of real estate/housing/commercial projects. The petitioner-Company decided to build up an IT park namely “Landmark Cyberpark” in Sector-67, Gurgaon (now Gurugram) and had invited application from interested parties to invest. Pursuant to the same, a Memorandum of Understanding (MoU) dated 23.01.2012 was executed between the petitioner-Company and the applicants (respondents No.2 and 3 herein) whereby the respondents No.2 and 3-applicants agreed to purchase an aggregate tentative super area of 500 sq. feet for a total sale consideration of Rs.30 lakhs. The payment of 100% of the basic sale price was to be made up front by respondents No.2 and 3-applicants and all other remaining charges such as maintenance, parking, EDC/IDC etc. were to be paid at the time of delivery of possession. The petitioner being the first party had further undertaken to pay a sum of Rs.30,000/- as assured return per month and payable quarterly to respondents No.2 and 3-applicants till the date of possession or 03 years whichever is earlier. It was further prescribed in the MoU that respondents No.2 and 3-applicants would agree to transfer leasing rights for a period of 09 years to the petitioner-Company, being the first party, after the delivery



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of possession, for which the petitioner shall pay @ Rs. 60/- per sq. feet per month as rent for a period of 09 years. The same was to appreciate by 15% after every 03 years. Certain other terms and conditions were also prescribed therein, however, the same are not being adverted to at this juncture since they are not germane to the controversy involved in the present case.

3. Undisputedly, respondents No.2 and 3-applicants deposited the total basic sale price to the tune of Rs.30 lakhs. Notwithstanding such deposit, the assured return @ Rs.30,000/- per month payable quarterly was, however, not released in favour of respondents No.2 and 3-applicants whereupon an application **No.660/2015** titled as **Vinod Kumar and another Vs. Landmark Apartments and others** was filed before the Permanent Lok Adalat (Public Utility Services), Gurugram for seeking release of the said benefit and also from restraining the petitioner from raising a demand of EDC/IDC and other statutory charges till delivery of possession.

4. The petitioner-Company entered appearance before the Permanent Lok Adalat (Public Utility Services) and raised objection with respect to the default on the part of respondents No.2 and 3-applicants in clearing the EDC as well as the IDC and other statutory dues.

5. As the conciliation efforts failed to arrive at an amicable resolution of the dispute, an adjudication under Section 22C (8) of the Legal Services Authorities Act, 1987 was undertaken by Permanent Lok Adalat (Public Utility Services). The contentions of the petitioner-developer were



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repelled and it was specifically held that the liability towards EDC/IDC arose only upon offer of possession and the same having not been extended, the petitioner-Company was liable to pay the assured return @ Rs. 30,000/- per month for the period asked for and it could not ask for EDC/IDC at that stage. The operative part of the award passed by the Permanent Lok Adalat (Public Utility Services), Gurgaon dated 04.07.2016 reads thus:-

“5. The admitted facts are that the respondents allotted 500 sq. ft. of area to the applicants against the basic sale price of Rs. 30 lacs which was paid by them as per receipts dated 13-01-2012 issued by the respondents. As per clause 4 of the MOU the respondents bound themselves to pay Rs. 30,000/- as assured return per month payable quarterly to the applicants till the date of possession or three years whichever is earlier. The MOU was executed between the parties on 13-01-2012. Since a period of three years has already expired and the respondents have not been able to deliver possession of any area to the applicants, they (respondents) are liable to pay assured return to the applicants Rs. 30,000/- per month for a period of three years. That period of three years expires on 22-01-2015. The respondents have already paid assured return to the applicants till February 2014. So they are liable to pay the balance amount of assured return to the applicants @ Rs. 30,000/- per month from March 2014 up to January 2015 i.e.



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for 11 months which comes to Rs. 3,30,000/-.

6. *So far as the demands of respondents of Rs. 2.75,000/- towards EDC etc and the demand of Rs. 77,250/- towards service tax through their letters dated 17-10-2014 are concerned, these are still premature because condition no 2 of the MOU clearly provides that the applicants have made payment of 100% of the basic sale price for the unit of 500 sq. It. and the remaining balance and all other charges like maintenance, parking, EDC/IDC etc according to the demand will be paid at the time of possession. Since the respondents have not yet offered possession of the allotted area to the applicants till date, they cannot make the demand of EDC/IDC or service tax etc.*

7. *The respondents are, therefore, directed to pay an amount of Rs. 30,000/- per month as assured return from March 2014 to January 2015 i.e. Rs. 3,30,000/-, to the applicants within 40 days from today, failing which they will be liable to pay interest on this amount @ 9% per annum from the date of application i.e. 19-03-2015, till the date of payment. The respondents are further directed not to raise any demand of EDC/IDC/IFMS etc till the time of possession of the allotted area to the applicants. The applicants are at liberty to take further proceedings regarding the recovery of rent etc of the allotted premises beyond January 2015, as*



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provided in the MOU. The application is disposed off accordingly. File be consigned to record room.”

6. It is informed by the learned counsel for the petitioner that they have already paid the amount in terms of the award so passed against them.

7. The allottee thereafter moved the instant application which was registered as Application No.2821 dated 31.08.2016 before the Permanent Lok Adalat (Public Utility Services), Gurgaon praying for refund of amount deposited by him with the petitioner-Company or to pay lease rent upto 09 years @ Rs.60/- per sq. feet in the interest of justice.

8. The petitioner-Company entered appearance before the Permanent Lok Adalat (Public Utility Services) and raised preliminary objections to the maintainability of the application and also submitting that the project has been completed but the occupation certificate is awaited from the Govt. Officials and that on the approval being granted, the possession shall also be delivered. It was apprised that the project could not be completed as the petitioner-Company was suffering from monetary losses and that they have already made payment of assured returned to respondents No.2 and 3-applicants.

9. Efforts were made for exploring the possibility of amicable resolution of the dispute through conciliation but the same could not result in any settlement amongst the parties whereupon adjudication was undertaken.

10. The parties led their respective evidence and upon consideration of the rival contentions advanced by the parties as well as the evidence brought on record, the Permanent Lok Adalat (Public Utility Services)



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directed the petitioner-Company to refund the amount of Rs.30 lakhs alongwith interest @9% per annum from the date of filing of the application till its realization and also to pay an amount of Rs.5500/- as litigation expenses. The operative part of the award reads thus:-

“9. We have heard learned counsel for the parties and perused the case file carefully and thoroughly.

10. After perusing the pleadings of the parties and documents placed on the file by both the parties, it reveals that the applicants paid the total amount of Rs.30,00,000/- to the respondent vide receipts dated 23.01.2012 (Ex.A5 & A6). The respondent provisionally allotted unit at Landmark Cyber Park at Sector-67, Gurugram as per letter dated 02.02.2012 (Ex.A7). The applicant also produced memorandum of understanding dated 23.01.2012 (Ex.A2). As per Clause 4, the respondent had to pay Rs.30,000/- as assured return per month payable quarterly to the applicant till the date of possession or three years whichever is earlier as the respondents were planning to put up an IT Park named Landmark Cyber Park at Sector-67, Gurugram on free hold land. The applicant being interested in purchasing the said space opted to invest in assured return plan after fully understanding all the terms & conditions and reached the understanding regarding the sale/purchase of the proposed complex of the respondent. The applicants alleged that as



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per above-said MoU, the respondent paid the assured return upto 17.03.2015 and has neither paid the amount from April, 2015 nor delivered the possession to the applicant.

11. As per Clause '5' of above-said MoU, the applicant has agreed to give leasing right of 9 years to the respondent after possession and the lock-in period which was 9 years in favour of the respondent. Thereafter, the respondent will pay Rs.60 per sq. feet as rent to the applicant for 9 years and rent will appreciate @15% after every three years.

12. The applicant also alleged that the respondent has not complied with the Award dated 04.07.2016 but only paid the amount upto January, 2015 and had not paid the assured return/rent beyond January, 2015. The respondent was restrained not to raise any demand of EDC/IDC/IFMS etc. till the time of possession of the alleged area to the applicant. The respondent has not offered the possession inspite of direction by the then Adalat vide Award dated 04.07.2016. The respondent only filed the affidavit Ex.R1 and alleged that the respondent paid the amount of rent till January, 2015. The respondent also alleged that as per MoU (Ex.A2), the applicant has not complied with the terms & conditions as agreed between the parties and has not paid the due amount.



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13. *From the documents, it is proved that the applicant has paid the total consideration amount of Rs.30,00,000/- to the respondents in the year 2012. The respondents complied with the terms & conditions of the agreement upto 2015 but had not paid the assured return since April, 2015 inspite of Award dated 04.07.2016. The respondent has not constructed the project as per terms & conditions of MoU. No specific stand was taken by respondent to explain the delay in payment of the claim of applicant for refund of deposited amount or to pay the assured rent or to hand over the possession of commercial site.*

14. *It is settled law by Hon'ble Supreme Court in case titled Pioneer Urban Land & Infrastructure Ltd. versus Govindan Raghavan Civil Appeal No. 12238 of 2018 & Pioneer Urban Land & Infrastructure Ltd. versus Geetu Gidwani Verma & Anr. Civil Appeal No. 1677 of 2019 in paragraph No. 9 which is reproduced as under:*

"9" "We see... The appellant builder failed to fulfill his contractual obligation of obtaining the occupancy certificate and offering possession of the flat to the respondent purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter The respondent flat purchaser could not be compelled to take possession of the flat, even though it was offered



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almost 2 years after the grace period under the Agreement expired. During this period, the respondent flat purchaser had to service a loan that he had obtained for purchasing the flat, by paying interest @ 10% to the bank... The applicants can be expected to wait for possession for a reasonable time."

15. *But in the present case in hand, the applicant has waited for assured rent/return upto 2016 and also waited for possession for 9 years i.e. from 2012 to 2021 but the respondent has neither paid the assured return nor gave possession of space to the applicant till date i.e. in the year 2024 which is also admitted by the respondent from the documents produced as affidavit Annexure R1, documents Ex.R2 & Ex.R3, Ex.R14 to Ex.R17 and photograph as Ex.R4 to R13 on file.*

16. *The respondent in the reply alleged that the applicants have not paid the EDC and IDC and sent the letter asking the applicants to arrange the payment of EDC, IDC and other statutory charges. However, this amount had to be settled from the amount of his future payment of assured return. The applicants had already paid an amount of Rs.30,00,000/- to the respondent in the year 2012 but the respondent has not paid the assured return as agreed between the parties upto 2024, The respondent has not settled the*



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dispute but are adamant to receive the amount of EDC & IDC without construction of the project within specified time. Hence, the dictum laid down in the authority Vineet Kumar and Another versus DLF Universal Limited 2019 SCC Online NCDRC 9 referred by counsel for respondent, is not applicable to the facts of the present case as facts of the present case are entirely distinguishable.

17. *The memorandum of understanding was executed between the parties on 23.01.2012 as per terms & conditions settled between the parties. Hence, deficiency in service on part of respondents has been proved on file. The applicant paid the amount of Rs.30,00,000/- in the year 2012 but the respondent has not complied with the terms & conditions executed between the parties, therefore, the applicant is entitled to get refund of his deposited amount along-with interest as the applicant cannot be expected to wait for possession for an indefinite and unreasonable long period. The respondent has not offered the possession of commercial site as it is not constructed and separated till date. The applicants have waited for 12 years which is beyond what is reasonable. Hence, the applicants are entitled to get their deposited amount along- with interest.*

18. *For the reasons recorded above, the application of the applicants is hereby partly allowed and the respondents*



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are directed to pay Rs.30,00,000/- along with simple interest @ 9% per annum from the date of filing the application till its realization and also to pay an amount of Rs.5,500/- as litigation expenses to the applicants. Award is passed accordingly. Copy of order be communicated free of costs. File be consigned to record room after due compliance.”

11. Aggrieved thereof the instant petition has been filed.
12. Learned counsel for the petitioner has raised the following arguments:-

- (i) That the award suffers from non-appreciation of the terms and conditions of the contract and that offer of possession had already been made by them and that the completion certificate was granted to them in the year 2018. There being no clause to cancel the MoU, refund could not be claimed.
- (ii) He contends that the Permanent Lok Adalat (Public Utility Services) has directed refund of the entire amount alongwith simple interest without giving benefit to the petitioner of the amount already paid as an assured return.
- (iii) He further submits that respondents No.2 and 3- applicants could not have asked for compensation as the MoU already provided for compensation in the form of assured return till the date of possession. Hence,



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respondents No.2 and 3-applicants in no way were prejudiced by the delayed completion and offer of possession by the petitioner-Company.

13. No other argument has been raised by the learned counsel for petitioner(s).

14. Adverting to the last argument as to the provision for an assured return till delivery of possession and the consequent lack of any prejudice to respondents No.2 and 3-applicants, I find that the said argument is not borne out from a correct and meaningful reading of MoU. The Clause which deals with an assured return provides the same till possession or 03 years whichever is earlier. Hence, the said Clause does not guarantee an assured return till the date of offer of possession rather limits the assured return for a period of 03 years at the max., of possession is not delivered. Undisputedly, the MoU was signed between the parties on 23.01.2012 and the period of 03 years came to an end on 22.01.2015. The occupation/completion having been obtained in the year 2018, hence, the petitioner seeks an immunity from payment of an assured return for the intervening period from January-2015 till 2018 as the mandate of acquiring the leasing right for a period of 09 years is to commence from the date of possession and not for the period prior thereto. Thus, the prejudice caused to respondents No.2 and 3-applicants is imminent. Invariably, the harmonious construction of the said clause would lead to an inference that at the time of execution thereof, the parties had agreed that the possession shall not be delayed beyond a period of 03 years. Thereafter, Clause 5 of the MoU would come into picture



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vesting the leasing rights in favour of the petitioner(s). Evidently, respondents No.2 and 3-applicants have been prejudiced as a result of the said delay by a period of more than 03 years in completion of the project and offer of possession which could not be made even as on the date when the application was filed by respondents No.2 and 3-applicants before the Permanent Lok Adalat (Public Utility Services), Gurgaon.

15. Hence, the period from January-2015 to 2018, when the possession is stated to be offered remains a zero period even though the leasing rates have been fixed. In a commercial investment, the rate of return is to be determined as per the time and if it is delayed by three years, its quantification even though remains the same but its value surely does not remain the same. Hence, value of Rs.30,000/- in the year 2015, in terms of what it could buy, may not be the same in the year 2018.

16. So far as the right of respondents No.2 and 3-applicants to seek annulment of the MoU is concerned, condition No.13 of the same is of a vital significance, the same is extracted as under:-

“13. That the First Party will reimburse the entire principal amount in case of non-completion of project along with bank interest of 18% annually.”

17. It is evident from a perusal of the same that the petitioner-Company became liable to reimburse the entire principal amount, in case of non-completion of project, along with bank interest of 18% per annum. A conjoint and harmonious reading of the above said clause(s) would lead to an inference that in case the possession is not handed over on or by 03 years



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from the date of execution of the MoU, the second party was entitled to seek refund of the entire principal amount and the petitioner company had agreed to return thereof alongwith interest @ 18% per annum. Notwithstanding a contractual obligation on the petitioner-Company to return the principal amount alongwith 18% per annum, the Permanent Lok Adalat (Public Utility Services) has evidently extended a concession to direct refund of the amount @ 9% per annum from the date of filing of the application i.e. from 31.08.2016.

18. Insofar as the argument of the petitioner about being given the benefit of deduction from the interest for the amount which has already been paid in compliance to the earlier award dated 04.07.2016 is concerned, the said argument stands defeated from a plain reading of the award itself. The interest has been granted to respondents No.2 and 3-applicants from the date of filing of the application No.2821 i.e. from 31.08.2016 while for the period prior thereto, the earlier award had been passed. Hence, the assured return is not being burdened again on the petitioner-Company when the refund of the interest has been ordered @9% per annum since the periods in both the awards are different and not overlapping.

19. Even otherwise, I find that the award of interest @9% per annum is highly generous considering that the petitioner-Company itself has undertaken return of the entire principal amount alongwith interest @18% annually on non-completion of project. Clause 13 did not provide any exception/set off for the period of assured return.

20. Learned counsel for the petitioner has failed to point out any

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illegality, impropriety or perversity to the prejudice of the petitioner that may be construed from the award dated 08.08.2024 passed by the Permanent Lok Adalat (Public Utility Services), Gurgaon and that already a generous indulgence has been granted to the petitioner by the Permanent Lok Adalat (Public Utility Services).

21. Finding no illegality, impropriety or perversity, the writ petitions are **dismissed** in limine. The awards passed by the Permanent Lok Adalat (Public Utility Services), Gurugram in Case No.2821/2016 (impugned in CWP-29967-2024); No. 2822/2016 (impugned in CWP-30074-2024); and No. 2820/2016 (impugned in CWP-30078-2024) respectively, are hereby affirmed.

22. All pending civil misc. application(s), if any, stand disposed of.

07.11.2024

Mangal Singh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(VINOD S. BHARDWAJ)

JUDGE