



In the High Court of Punjab and Haryana, at Chandigarh

**Civil Revision No. 728 of 2024
And Other Connected Cases**

**Reserved On: 28.03.2025
Pronounced On: 04.04.2025**

Brig. Raj Kapoor Mour

... Petitioner(s)

Versus

M/s Landmark Apartments Pvt. Ltd.

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Kulvir Narwal and Ms. Geetanjali Bhatia, Advocates
for the petitioner(s).

Mr. Karanvir Hooda, Advocate
for the respondent.

Anil Kshetarpal, J.

I. Factual Compass

1. With the consent of the learned counsel representing the parties, a batch of 14 revision petitions, the details whereof are at the foot of the judgment, shall stand disposed of by this common order.

2. The only issue arising in the present case is with respect to exclusion of Civil Court's jurisdiction under Section 79 of the Real Estate (Development and Regulation) Act, 2016 (hereinafter referred to as "the 2016 Act") to entertain and decide suit filed by colonizer/promoter for recovery of unpaid dues against the allottee.

3. In all these cases, the respondent, a Colonizer-cum-Developer, filed summary suits under Order XXXVII of the Code of Civil Procedure,

1908 (hereinafter referred to as “CPC”) for the recovery of the various amounts. The petitioners (the defendants/allottees) were allotted the apartments/flats in a residential project, namely ‘Kunjean Heights’ at Sector 48, Faridabad, developed by the plaintiff. There was a flat buyer agreement and the physical possession of the unit has been handed over after the parties entered into a settlement when the complaints were filed by the allottees before the Consumer Court. The plaintiff claims that in order to discharge their liability, the allottees have been issued the cheques, which, on presentation, were returned with remarks “payment stopped by Drawer”. The complaints under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the 1881 Act”) are pending. Through the suit, the plaintiff claims not only the cheque amount, but also outstanding dues, charges such as interest on delayed payment, holding charges, maintenance charges, IFMC etc.

4. The defendants filed the applications under Order VII Rule 11 CPC which were dismissed by the Trial Court on the ground that the summary suit as provided under Order XXXVII CPC is a special remedy for claiming recovery of the amount on the basis of the cheque. Hence, the Court came to a conclusion that the relief claimed in the instant suit cannot be granted under the 2016 Act. Thus, the applications were dismissed.

II. Arguments Put Forth

5. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

6. The learned counsel representing the petitioner, while referring to the copy of the plaint and Section 19(6), 31 and 79 of the 2016 Act,

contends that the Trial Court has erred in dismissing the application.

7. Per contra, the learned counsel representing the respondent submitted that the Trial Court has correctly dismissed the application as there is no remedy under the 2016 Act for recovery of the amount.

III. Discussion

8. At this stage, it would be appropriate to extract Sections 19, 31 and 79 of the 2016 Act:-

“19. Rights and duties of allottees.—(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (l) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

- (8) *The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.*
- (9) *Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.*
- (10) *Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.*
- (11) *Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.*

XXXX XXXX XXXX XXXX XXXX

31. Filing of complaints with the Authority or the adjudicating officer.—*(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.*

Explanation.—For the purpose of this sub-section “person”

shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed.”

XXXX XXXX XXXX XXXX XXXX

79. Bar of jurisdiction.—*No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”*

9. Section 19(6) provides that every allottee shall be responsible to make necessary payments in the manner and within the time as specified in the agreement for sale. Section 31 enables any aggrieved person to file a complaint to the authority or the adjudicating officer for violation or contravention of the provisions of the Act or the Rules or Regulations made thereunder. Such complaint is maintainable against Promoter, Allottee or Real Estate Agent. Thus, the complaint is maintainable by/against the allottee. Section 79 excludes the jurisdiction of the Civil Court to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine. In other words, if the provisions of the Act enables the Authority or the Adjudicating Officer or the Appellate Tribunal to adjudicate

upon the dispute, then the jurisdiction of the Civil Court is excluded. It is pertinent to note that the Civil Courts have plenary jurisdiction which signify that they have the authority to try all types of civil suits unless such jurisdiction is expressly or impliedly barred by a Statute. Section 79 expressly bars the jurisdiction of the Civil Court in matters where authority and appellate authority have been empowered.

10. In this case, the possession has already been delivered to the allottee. The promoter is claiming that the allottees have not paid the amount which is recoverable. The promoter claims that the recoverable amount is as per agreement. Section 19(6) makes every allottee liable to make necessary payments in the manner and within the time specified either as per the agreement or otherwise. Hence, the promoter is entitled to file a complaint under Section 31 of the 2016 Act. The promoter has not only claimed the amount of cheque but also claimed other charges as noticed above.

11. Additionally, once a specialized Tribunal has been created under the 2016 Act which provides for remedy under the Act, the Civil Court should not entertain the suit. Such specialized Tribunal has the benefit of experts and domain knowledge of the subject which would be in a better position to assess the recoverable amount against the allottee.

12. In this case, the Trial Court has erred in concluding that there is no remedy like summary suit. Once the jurisdiction of the Civil Court to entertain and decide the dispute is excluded, the Civil Court erred in overlooking the same particularly when under Section 31 the colonizer/promoter has the remedy of filing complaint before the Tribunal

constituted under the 2016 Act.

IV Decision

13. Keeping in view the aforesaid discussion, all the 14 revision petitions are allowed. The plaint filed by the respondent (the plaintiff) shall stand rejected under Order VII Rule 11 CPC with liberty to avail remedy under the 2016 Act.

(Anil Kshetarpal)
Judge

April 04, 2025
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No

Sr. No.	Case No.	Party’s Name
1.	CR-734-2024	Suresh MalikVs. M/s Landmark Apartments Pvt. Ltd.
2.	CR-795-2024	Aruna Datta Vs. M/s Landmark Apartments Pvt. Ltd.
3.	CR-799-2024	Tilak Raj Choudhary Vs. M/s Landmark Apartments Pvt. Ltd.
4.	CR-800-2024	Shailender Singh Dahiya Vs. M/s Landmark Apartments Pvt. Ltd.
5.	CR-802-2024	Maha Singh Grewal Vs. M/s Landmark Apartments Pvt. Ltd.
6.	CR-803-2024	Suman Tewatia Vs. M/s Landmark Apartments Pvt. Ltd.
7.	CR-805-2024	Singh Raj Verma Vs. M/s Landmark Apartments Pvt. Ltd.
8.	CR-807-2024	Jagmohinder Singh Lochab Vs. M/s Landmark Apartments Pvt. Ltd.
9.	CR-808-2024	Anmol Saini Vs. M/s Landmark Apartments Pvt. Ltd.
10.	CR-811-2024	Raj Kumar Godara Vs. M/s Landmark Apartments Pvt. Ltd.
11.	CR-812-2024	Suresh Kumar Sharma Vs. M/s Landmark Apartments Pvt. Ltd.
12.	CR-813-2024	Kanwar Singh Suhag Vs. M/s Landmark Apartments Pvt. Ltd.
13.	CR-817-2024	Suresh Kumar Kataria Vs. M/s Landmark Apartments Pvt. Ltd.

(Anil Kshetarpal)
Judge

April 04, 2025
“DK”