

M/s Avalon Projects & others**vs.****Philip James & others****Appeal No.135 of 2019**

Present: Shri Hemant Saini, Advocate, learned counsel for the appellant.
None for the respondents.

ORDER:

Yesterday we had adjourned this appeal as this Tribunal was informed that an order granting interim relief has been passed by the Hon'ble High Court in Appeal No. RERA APPL-16-2019(O&M) Experion Developers Pvt. Ltd. Vs. Sunil Kumar arising out of the order dated 29.07.2019 passed by this Tribunal. We have obtained copy of the order dated 28.08.2019 passed by the Hon'ble High Court from the website of the Hon'ble High Court which shows that the order passed by the Hon'ble High Court was only applicable to Appeal No.146 of 2019. The Hon'ble High Court has made it clear that the said order dated 28.08.2019 will not be applicable in other appeals which have been heard or being heard analogues. So, no benefit can be given to the applicants/appellants of the order dated 28.08.2019 passed by the Hon'ble High Court.

2. Learned counsel for the appellants has stated at bar that the appellants/promoter had preferred the appeal against the order dated 29.07.2019 passed by this Tribunal. He has pleaded for adjournment of the cases to await the outcome of the appeals stated to be filed by the appellants against the order dated 29.07.2019 passed by this Tribunal. He has filed affidavit of Shri Himanshu Monga, Advocate in the connected appeal to this effect.

3. We have duly considered the pleas raised by the learned counsel for the appellants. The appellants have deposited part amount of Rs.1,00,581/- in order to comply with the provisions of proviso to

section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'). Section 43(5) of the Act reads as under:-

“43. Establishment of Real Estate Appellate Tribunal-

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained without the promoter first having deposited with the Appellate Tribunal at least thirty per cent of the penalty or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.”

4. As per the provisions of proviso to section 43(5) of the Act, the appellants/promoter was required to deposit whole of the amount payable to the allottee, imposed by the learned Real Estate Regulatory Authority, to get its appeal entertained but in this case only part of the amount was deposited by the appellants at the initial stage of the appeal. Thereafter, an application was moved by the appellants for waiver of the condition of pre-deposit. The said application has been dismissed by this Tribunal vide detailed order dated 29.07.2019. The appellants/promoter was given time to deposit the requisite amount up to 26.08.2019, as required under the provisions of proviso to section 43(5) of the Act. But no amount has been deposited by the appellants/promoter in compliance of that order.

5. Today, learned counsel for the appellants has sought adjournment on the ground that the appeal against the order dated

29.07.2019 has been filed before the Hon'ble Punjab and Haryana High Court. It is not mentioned as to whether the said appeal has been listed for hearing before the Hon'ble High Court or not. It is settled principle of law that mere filing of the appeal does not amount to stay the operation of the order passed by the court below.

6. As per the provisions of proviso to section 43(5) of the Act, the deposit of whole of the amount payable to the allottee was a condition precedent for getting its appeal entertained by the appellants/promoter but the appellants/promoter had not complied with the said mandatory provision of the Act. Consequently, the appeal filed by the appellants/promoter cannot be entertained and the same is hereby dismissed.

7. The amount deposited by the appellants/promoter with this Tribunal be transferred to the account of the learned Real Estate Regulatory Authority, Panchkula. Copy of this order be communicated to the Learned Real Estate Regulatory Authority, Panchkula.

8. File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
29.08.2019

Inderjeet Mehta
Member (Judicial)
29.08.2019

Anil Kumar Gupta
Member (Technical)
29.08.2019