M/s Lighstone Developers India Pvt. Ltd.
Vs.
HRERA, Panchkula
CM No. 519 of 2024
In Appeal No.255 of 2024

Present: Mr. Neeraj Goel, Advocate,
for the appellant.

Learned counsel for the appellant has impugned the order dated 01.05.2024 whereby penalty has been imposed on it for not uploading the Quarterly Progress Report (QPR) in time. He argues that:

(i) no opportunity of hearing was afforded to the appellant before imposing penalty. The orders were reserved by the Authority on 13.03.2023 and 31.01.2024 respectively and pronounced on 10.05.2023 & 09.04.2024. He has given a chart in this regard, which is reproduced for ready reference:

| Date of order of penalty | Date of upload | Penalty per day | Penalty assed by the Authority from date of order | Penalty from the date of upload |
|---|---|---|---|---|
| 13.03.2023 | 10.05.2023 | 1000/- | 3,25,000/- | 2,81,000/- |
| 31.01.2024 | 09.04.2024 | 10,000/- | 1,50,000/- | Nil |
| | | Total | 4,75,000/- | 2,81,000/- |

(ii) the penalty has to be assessed from the date of pronouncement and not from any date prior to that. Relevant paras of the grounds of appeal read as under:

*"7. That the Ld. Authority erred in taking into consideration that the order vide which penalty has been imposed were uploaded later in time due to which it is improbable to believe that the appellant was aware about the penalty imposed for non-compliance of direction. It is the settled law that once the order is pronounced the penalty if any is to*

> *be assessed from the date of pronouncement and not from the date of reserving the order as the common jurisprudence dictates that the retrospective penalization is unconstitutional and is also against the principles of natural justice.*
>
> *...*
>
> *9. That even the provisions regarding levy of penalty and increased tax rate are in the nature of substantive law and not adjectival law. Charging sections are to be strictly construed. Even Machinery provisions are to be construed as would effectuate the object and purpose of the statute and not defeat the same. Therefore, penalty provisions, even if construed as forming part of the machinery provisions are to be considered as substantive law which cannot be construed retrospectively."*

2. He further submits that he has made 30% pre-deposit of the penalty imposed on it.

3. Issue notice to the respondent for 03.09.2024 to clarify its stand.

4. At this stage, learned counsel for the appellant submits that order imposing penalty be stayed by this Bench. However, as the matter is yet to be considered *in extenso*, it is directed that if the Authority insists on deposit of penalty, it shall be subject to outcome of the appeal.

5. Process be issued for this purpose.

6. Copy of this order be sent to the Chairman, HRERA, Panchkula.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

23.08.2024
Rajni