

M/s BPTP Ltd. vs. Arup Kumar Banerjee & anr.

Appeal No.29 of 2019

Present: Shri Hemant Saini, Advocate, learned counsel for the appellant.
Shri Nitin Kant Setia, Advocate, learned counsel for the respondents.

ORDER:

This appeal was put up before this Tribunal for the first time on 17.01.2019. The appellant-promoter has deposited part of the amount 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'). As the said amount was insufficient to comply with the provisions, time was given to the appellant to comply with the proviso to section 43(5) of the Act.

2. Thereafter, vide our order dated 11.04.2019 passed in a bunch of appeals, the appellant-promoter was directed to deposit the total amount payable to the allottee. Instead of complying with the said order, the appellant moved an application for waiver of the condition of pre-deposit on 13.05.2019. The said application has been dismissed vide our detailed order dated 29.07.2019 and the appellant-promoter was granted time to deposit the requisite amount in order to comply with the proviso to section 43(5) of the Act on or before 26.08.2019. It was also made clear that no further extension shall be granted as much time has already passed since the date of institution of the appeal.

3. As per the report of the office, the appellant-promoter has not deposited the requisite amount in order to comply with the provisions of proviso to section 43(5) of the Act and now the appellant has filed an application for extension of the time to enable the appellant to avail the legal remedies in accordance with law. As per averments in the

application the appellant-applicant could not avail the legal remedy due to strike by the Bar Association of the Punjab and Haryana High Court.

4. We have heard learned counsel for the parties on this application.

5. Learned counsel for the applicant-appellant has pleaded that the local Bar Association was on strike and due to this reason the appellant-promoter could not avail the statutory remedy to get stay the order dated 29.07.2019 passed by this Tribunal. The said circumstances were beyond the control of the appellant. So, the appellant be granted extension of four weeks time to do the needful.

6. On the other hand, learned counsel for the respondents contended that strike was called off by the local Bar Association w.e.f. 17.08.2019. The appellant had sufficient time to avail the legal remedy and no ground is made out to further extend the time for deposit of the amount.

7. We have duly considered the aforesaid contentions. As mentioned above, the present appeal was instituted before this Tribunal for the first time on 17.01.2019. A period of more than seven months has already passed. 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.”

8. The proviso of the aforesaid provision depicts that where the appeal is filed by the promoter with the Appellate Tribunal, it is incumbent that it should deposit the total amount payable to the allottee as imposed by the learned Real Estate Regulatory Authority. It is a condition precedent to entertain the appeal. In the instant case sufficient time has been granted to the appellant-promoter after the institution of the appeal to comply with the aforesaid provisions. But instead of complying with the statutory provisions of proviso to section 43(5) of the Act, the appellant-promoter has indulged in delay tactics by moving the applications.

9. Vide our order dated 11.04.2019, the appellant was granted one-month time to deposit the requisite amount. Again vide order dated 29.07.2019 when the application moved by the appellant for waiver of the condition of pre-deposit was dismissed, more than three weeks time was granted to comply with the provisions of proviso to section 43(5) of the Act. The directions issued by this Tribunal had no desired result. Thus, the appellant has already been granted more than sufficient time for deposit of the requisite amount.

10. The ground taken in the present application that the appellant could not avail the statutory/legal remedy due to strike by the Bar Association, cannot be a legal ground to grant the extension in time to deposit the amount. The application for waiver of the condition of pre-deposit moved by the appellant was dismissed by this Tribunal vide order dated 29.07.2019. The same was uploaded on the website of this Tribunal on 01.08.2019. There was sufficient time with the appellant-promoter to avail the remedy available to it under the law. The

appellant/promoter is a big builder. It must be having its legal cell and might have employed the qualified legal persons. The appellant could have filed appeal through its legal cell if the Bar Association was on strike. Needless to say, if the Bar Association is on strike, the functioning of the court does not come to standstill. Moreover, the strike by the Bar Association was called off on 17.08.2019. The plea raised in the application that the appellant/promoter proposed to file the appeal against the order dated 29.07.2019 passed by this Tribunal, is no ground for enlargement of the time. The law is well settled and even the filing of the appeal does not amount to stay the operation of the order. Even today, the appellant-promoter has not come forward with the demand draft of the requisite amount to show its bonafide. Thus, no ground is made out for extension of the time to deposit the requisite amount. Hence, this application is hereby dismissed.

11. As the appellant-promoter has not complied with the mandatory provisions of proviso to section 43(5) of the Act as the full amount payable to the allottee has not been deposited, so the present appeal cannot be entertained and the same is hereby dismissed.

12. The amount, if any, deposited by the appellant/promoter with this Tribunal be transferred to the account of the learned Real Estate Regulatory Authority, Panchkula.

13. File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
27.08.2019

Inderjeet Mehta
Member (Judicial)
27.08.2019

Anil Kumar Gupta
Member (Technical)
27.08.2019

Judgment - Haryana Real Estate Appellate Tribunal