

Emaar India Ltd. Vs. Initia Solutions Pvt. Ltd.
Appeal No.372 of 2022

Present: Sh. Randeep Singh Rai, Ld. Senior Advocate, with Sh. Kunal Dawar, Sh. Sanjeev Sachdeva, Ms. Rubena Virmani, Ms. Tanika Goyal, Sh. Siddharth Gupta, Advocates, Ld. counsel for the appellant.

Sh. Akshay Bhan, Ld. Senior Advocate, with Sh. Amandeep Singh Talwar and Sh. Ravinder Singh, Advocates, Ld. counsel for the respondent/caveator.

Heard on the issue of compliance of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (in short Act). Ld. counsel for the appellant has pleaded that the appellant has claimed the set off as allowed by the ld. Authority in the impugned order. The appellant has already deposited the requisite amount, so, the provisions of proviso to Section 43(5) of the Act stands complied with.

On the other hand, ld. counsel for the respondent has pleaded that the amount of set off has not been correctly calculated by the appellant as per the terms and conditions of the BBA.

We have duly considered the aforesaid contentions. As per the calculations made by our office, the appellant was required to pay a sum of Rs. 18,36,081/- as interest for delayed in delivery of possession. The appellant has claimed the set off of Rs. 25,98,858/- i.e. the amount due against the respondent plus interest on delayed payments and as per the calculations made by our office. Thus, after considering the set off of the amount recoverable by the appellant, no amount is required to be deposited by the appellant to satisfy the condition of proviso to Section 43(5) of the Act. Respondent has only raised the dispute with respect to the calculations of the interest on delayed payments but the respondent has not filed its own calculations to show inaccuracy in the calculations of the interest on delayed payments claimed by the appellant/promoter. So, in our opinion, the appellant has complied with the provisions of proviso to Section 43(5) of the Act. However, the controversy regarding

calculation of the amount for delayed payment will be subject to the decision of the appeal or subject to moving the appropriate application by the respondent along with its own calculations at the appropriate stage.

Arguments on the stay application filed by the appellant heard.

Order reserved.

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

Inderjeet Mehta
Member (Judicial)

23.05.2022

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