

M/s Alpha Corp. Development Pvt. Ltd.

Vs.

Bhagat Ram Agarwal

Appeal No.433 of 2019

Present: Shri Alok Jain, Advocate, Ld Counsel for the appellant.
Shri Vikas Deep, Advocate, Ld Counsel for respondent no.1.

The appellant/promoter has filed this appeal without depositing any amount to comply with the provisions of proviso to section 43(5) of the Haryana Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act). Rather the appellant has moved an application for waiver of the condition of pre-deposit, primarily on the ground that the learned Real Estate Regulatory Authority, had no jurisdiction to pass the impugned order and the complaint could only be entertained by the Adjudicating Officer. Thus the impugned order suffers from the patent illegality. It is further pleaded that the view subscribed by the Ld Authority is ex-facie palpably wrong and in contravention of the fact that the work could start only after the date of approval of the service plan/estimates by the Directorate Town and Country Planning Haryana on 13.02.2013. It is further pleaded that the appellant has excellent prima facie case and balance of convenience also lies in its favour.

2. Respondent has not filed any written reply to the application for waiver of the condition of pre-deposit, however the same has been orally opposed.

3. We have heard Shri Alok Jain, Advocate, Ld counsel for the appellant/applicant and Shri Vikas Deep, Advocate, Ld counsel for the respondent and carefully gone through the record.

4. Ld counsel for the appellant contended that the impugned order passed by the Ld Authority is without jurisdiction. Ld Authority has no jurisdiction to entertain the complaint, the matter was to be adjudicated upon by the Adjudicating Officer. He further contended that in the impugned order the counter directions have been given and the order is not executable. It is not clear as to whether any amount is payable by the complainant/respondent/allottee or the appellant/promoter and if so how much. Thus, he contended that in this case no amount is required to be deposited and condition for deposit should be waived as the appellant/promoter has a strong prima facie in its favour.

5. On the other hand Shri Vikas Deep, Advocate Ld counsel for the respondent contended that the provisions of proviso to section 43(5) of the Act are mandatory. The appellant/promoter was required to deposit the whole of the amount as per the impugned order passed by the Ld Authority, which was payable to the respondent/allottee.

6. We have duly considered the aforesaid contentions.

7. The question as to whether the waiver of the condition of pre-deposit can be granted on the ground that the Ld Real Estate Regulatory Authority had no jurisdiction to entertain the complaint is no longer res-integra. In a recent order dated 05.09.2019 passed by our Hon'ble High Court in RERA APPEAL No.12 of 2019 (O&M) titled as 'Janta Land Promoters Pvt. Ltd.

versus Abhimanyu Singh Vinayak and another' it has been laid down as under: -

“In my considered view, the Legislature in its wisdom has enacted the Act for the purpose of regulation and promotion of Real Estate Sector and to ensure sale of plot, apartment or buildings in an efficient and transparent manner and also to protect the interest of consumers in the Real Estate Sector and to establish an adjudicating mechanism for speedy disputed redressal. It has come up with stringent provision laying down under the proviso to Section 43 Sub-Section 5 that in case appeal is filed by the promoter against the consumer or the allottee, it shall not be entertained without it first having deposited with the Appellate Tribunal the pre-requisite amount which in order to safeguard the interest of the consumer, so that they are not unnecessarily drawn into unnecessary litigation by the promoter or the developer.

Thus, in my considered view, since such special provision has been included under the Act for the aforesaid reason, and further, even if the Appellate Authority proceeds to decide the appeal on the ground of maintainability of the proceeding before the RERA Authority, that will also amount to hearing and taking a decision in the appeal, the promoter would be liable to deposit the pre-requisite amount as per proviso to the Section 43(5) of the Act.

In the result, this appeal, being devoid of any merit, is accordingly, dismissed.”

8. In the aforesaid case, the Hon'ble High Court has categorially laid down that even if the Appellate Authority proceeds to decide the appeal on the ground of maintainability of the proceedings before the learned Authority, that will also amount to hearing and taking a decision in the appeal and the promoter would be liable to deposit the pre-requisite amount as per proviso to section 43(5) of the Act.

9. Further, the Hon'ble Apex Court in civil appeal no.7358 of 2019 titled as M/s Tecnimont Pvt. Ltd. Vs. State of Punjab & Others decided on 18.09.2019 has categorially laid down that the Appellate Authority/Tribunal has no inherent power to waive the condition of pre-deposit provided in the statute.

10. The contentions raised by Shri Alok Jain, Advocate Ld counsel for the appellant that no amount was payable to the allottee are also without any substance. The Ld authority has directed the appellant/promoter to file a fresh statement of account within a period of 45 days from the date of order i.e. 11.04.2019, calculating the amount as per the directions given in the impugned order. Even that statement of account has not been filed alongwith this appeal. Thus it cannot be presumed that no amount was payable by the appellant/promoter to the respondent/allottee.

11. In view of the aforesaid legal position the application moved by the appellant for waiver of the condition of pre-deposit has no merit and the same is hereby dismissed.

12. However, in the interest of the justice the appellant/promoter is given time to comply with the proviso to section

43(5) of the Act. The requisite amount i.e. whole of the amount payable to the respondent/allottee as imposed by the Ld Authority vide impugned order be deposited with this Tribunal on or before 11.11.2019.

13. Now to come up on 13.11.2019 for seeing the compliance of the order.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
15.10.2019

Inderjeet Mehta
Member (Judicial)
15.10.2019

Anil Kumar Gupta
Member (Technical)
15.10.2019