

M/s TDI Infrastructure Ltd. Vs. Manoj Suneja

472 of 2019

Present: Shri Rajnish Singh, Advocate, learned counsel for the appellant.

Respondent with Shri Satish Mishra, Advocate, learned counsel for the respondent.

The appellant-promoter has filed two applications. First application is for condonation of delay in re-filing the appeal. Learned counsel for the respondent has not seriously contested this application. Thus, in view of the reasons mentioned in the application, the application is allowed and delay of 60 days in re-filing of the present appeal is hereby condoned.

2. The appellant has also moved the another application for waiver of the condition of pre-deposit as contemplated under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') on the ground that the impugned order passed by the learned Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority') is without jurisdiction and is nullity and as the complaint was ought to be filed before the Adjudicating Officer in view of Section 71 of the Act. The appellant-promoter has also pleaded that the impugned order has been passed by the learned Authority arbitrarily and in a mechanical manner without going through the facts and circumstances of the case, the pre-deposit at this juncture will be an additional cost and the project will suffer. The appellant Company is passing through the financial crunch.

3. The respondent-allottee has contested this application by filing written reply.

4. We have heard learned counsel for the parties on this application and have carefully gone through the record of the case.

5. It is pertinent to mention that during the hearing of the application, the respondent-allottee Shri Manoj Suneja has made the following statement: -

“That in the present case I only seek the relief of delivery of possession and interest for delayed possession. I do not seek any refund of the amount deposited by me. The relief of refund may be deemed to have been given up by the complainant. I have already filed the separate petition before the adjudicating officer, Panchkula for grant of compensation. I reserve my right to pursue that complaint.”

6. In view of the statement made by the respondent, the respondent is only seeking the relief of delivery of possession and interest for delayed possession in the present case. He does not seek any relief for refund of the amount deposited by him and he is separately pursuing his remedy for grant of compensation before the Adjudicating Officer, Panchkula. Thus, in the present case no relief has been claimed by the respondent-allottee for refund and compensation.

7. We are of the strong prima facie opinion that the learned Authority has every jurisdiction to deal with the complaint for issuance direction for delivery of possession of the unit and grant interest on delayed possession as these reliefs are not precluded from the jurisdiction of the learned Authority either in Section 71 of the Act or rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

8. Moreover, we have already decided the applications for waiver of the condition of pre-deposit in a bunch of 95 appeals vide our detailed order dated July 29<sup>th</sup>, 2019 the lead appeal being **Appeal No.74 of 2018 titled as “Ramprastha Promoters and Developers Pvt. Ltd. Versus Ishwer Chand Garg”**. The issues raised in the present application moved by the appellant-promoter are similar to those raised in the application filed in Appeal No.74 of 2018. By taking into consideration all the issues, the applications for waiver of the condition of pre-deposit filed in the above referred bunch of 95 appeals were dismissed vide our detailed order dated July 29<sup>th</sup>, 2019. Thus, in view of our observations in the order dated July 29<sup>th</sup>, 2019 and our discussions above, the present application has no merits and the same is hereby dismissed.

9. The appellant-promoter is granted an opportunity to comply with the proviso to Section 43(5) of the Act. The appellant-promoter will file fresh calculations showing the amount imposed by the learned Authority as per the impugned order within 15 days with advance copy to the learned counsel for the respondent. The requisite amount be deposited with this Tribunal on or before 09.09.2019.

10. The case to come up on 12.09.2019 for seeing the compliance of this order.

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh  
22.08.2019

Inderjeet Mehta  
Member (Judicial)  
22.08.2019

Anil Kumar Gupta

Member (Technical)  
22.08.2019

Judgment - Haryana Real Estate Appellate Tribunal