

Sana Realtors Private Limited vs. Mukesh Chellani

Appeal No. 540 of 2019

Present: Shri Shubhnit Hans, Advocate, learned counsel for the appellant.

Office report perused.

The appeal be registered.

The appellant has moved an application for waiver of the condition of pre-deposit.

Our Hon'ble High Court in a recent order dated 05.09.2019 passed in RERA APPEAL No.12 of 2019 (O&M) titled as 'Janta Land Promoters Pvt. Ltd. versus Abhimanyu Singh Vinayak and another' has 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.”

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.

In view of the aforesaid ratio of law laid down by the Hon’ble High Court, the application moved by the appellant for waiver of the condition of pre-deposit is hereby dismissed.

The appellant/promoter is directed to deposit the requisite amount in order to comply with the proviso to section 43(5) of the Act on or before 16.10.2019 and the case file be put up on 17.10.2019 for seeing the compliance of the order.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
17.09.2019

Inderjeet Mehta
Member (Judicial)
17.09.2019

Anil Kumar Gupta
Member (Technical)
17.09.2019