

M/s Pareena Infrastructures Pvt. Ltd.

Vs.

Arun R

CM No.229 of 2023

Appeal No.98 of 2023

Argued by: Mr. Neeraj Gupta, Advocate,
for the appellant.

ORDER

The appellant-promoter has not deposited any amount with this Tribunal as imposed by Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred as 'the Authority') vide impugned order dated 09.12.2022. Rather, the applicant/appellant has moved an application for waiver of the condition of pre-deposit as per Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), primarily on the ground that the learned Authority in para 63(iii) of the impugned order dated 09.12.2022, has directed the respondent-allottee to pay the outstanding dues after adjustment of interest for the delayed period, as awarded by the authority. At the time of filing this appeal, the delayed interest awarded by the learned authority comes to Rs.1,76,945/-, whereas, the total outstanding amount against the allottee is Rs.2,10,555/- and an amount of Rs.33,610/- is due towards the respondent-allottee. Thus, the appellant has prayed that application may be allowed and the applicant-appellant be exempted

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from depositing the amount as required by proviso to Section 43(5) of the Act.

2. Learned counsel for the appellant has been heard and the entire material available on record has been thoroughly perused.

3. Hon'ble Supreme Court has already tested the constitutional validity of Section 43(5) of the Act, in case titled ***Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357***, wherein the Apex Court has categorically held that due compliance of pre-deposit as envisaged in Section 43(5) of the Act, in no circumstances can be said to be onerous as prayed for or in violation of Articles 14 or 19 (1)(g) of the Constitution of India. Thus, the law is now well settled that as per the proviso to Section 43(5) of the Act, where the promoter files an appeal with the Appellate Authority, it shall not be entertained without the promoter first having deposited the amount to be paid to the allottee including interest and compensation imposed upon it and the condition of pre-deposit is mandatory for hearing the appeal filed by the promoter.

4. Admittedly, the amount of Rs.1,77,219/- calculated by the Registry of this Tribunal to comply with the proviso to Section 43(5) of the Act, has not been deposited by the applicant-appellant. The stand taken by the applicant-appellant that in view of the observations as

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mentioned in para no.63(iii) of the impugned order, the allottee is liable to pay the amount to the appellant, cannot be adjudicated at this stage as it would touch the merits of the case and adjudication of the same, at this stage, will virtually amount to entertainment of the appeal, which is not permissible without compliance of the mandatory provisions of Section 43(5) of the Act.

5. Consequently, the present application is hereby dismissed with Rs.5,000/- as costs. The costs be deposited with the District Legal Services Authority, Gurugram.

6. However, in the interests of justice the applicant-appellant is granted time to comply with the provisions of proviso to Section 43(5) of the Act, by depositing the requisite amount i.e. whole of the amount payable to the respondent/allottee as adjudged by the learned Authority in the impugned order and has become due as on the date of filing the present appeal, on or before 14.07.2023.

7. Now to come up on 17.07.2023 for appropriate orders.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta
Member (Judicial)

02.06.2023
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