

**HARYANA REAL ESTATE APPELLATE TRIBUNAL
CHANDIGARH**

Appeal No. 02/2019

SARE Gurugram Private Limited
Regd. office at E-7/12, LGF, Malviya Nagar,
Delhi 110017, IInd Address: Plot No.46, Udhog Vihar,
Phase-IV, Gurugram-122015

...Appellant

Versus

1. Mr Vikas Aggarwal son of Sh P.G. Goswami
2. Mrs Radhika Aggarwal wife of Vikas Aggarwal

Both R/o J-4/24, DLF Phase 2,
Gurugram, Haryana.

....Respondents

**Coram: Justice Darshan Singh (Retd), Chairman
Sh Inderjeet Mehta, Member (Judicial)
Sh Anil Kumar Gupta, Member (Technical)**

Present: Sh Sangram Singh Saron, Advocate, Ld counsel for the
appellant.

None for the respondent.

ORDER :-

The present appeal was presented before this Tribunal for the first time on 03.01.2019. The appellant has deposited only 30% of the amount of interest imposed by the Ld Real Estate Regulatory Authority, Gurugram, which was payable to the respondent/allottee. Thereafter, the appeal remained adjourned from date to date. Ultimately vide our detailed order dated 11.04.2019 it was directed that the appellant is required to deposit the total amount payable to the allottee. The appellant was granted one month time to deposit the requisite amount but instead of depositing the requisite amount the appellant/promoter moved an application for waiver of the condition of pre-deposit. The said application has been dismissed by this Tribunal

vide detailed order dated 29.07.2019, the appellant was again granted time to deposit the requisite amount on or before 26.08.2019. As per the report of the office the requisite amount was again not deposited within the stipulated period.

2. Shri Sangram Singh Saron, Ld counsel for the appellant contended that due to the strike by the Local Bar Association, the appellant could not avail the appropriate legal remedy to assail the order dated 29.07.2019. He contended that now the appellant has filed the appeal with the Hon'ble High Court but the same is yet to be listed. He has pleaded for the extension of the time, so that the appellant may avail the legal remedy.

3. We have duly considered the aforesaid contentions as mentioned above this appeal was presented before this Tribunal for the first time of 03.01.2019. The appellant/promoter has not fully complied with the provisions of proviso to section 43(5) of the Haryana Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act). Ultimately vide order dated 11.04.2019 this Tribunal has made it clear that the whole amount payable to the allottee is required to be deposited by the promoter in order to get its appeal entertained. One month time was given to deposit the requisite amount vide order dated 11.04.2019 but instead of complying with that order the appellant/promoter adopted the delayed tactics and moved an application for the waiver of the condition of the pre-deposit. The said application has been dismissed vide our detailed order dated 29.07.2019 and again the appellant was given time to deposit the requisite amount by 26.08.2019 but again the compliance of that order has not been made.

4. Mere this fact that the Local Bar Association was on strike is not a ground to enlarge the time to comply with the provisions of proviso

to Section 43(5) of the Act. The order dated 29.07.2019 was uploaded on the website of this Tribunal on 01.08.2019. It is also an admitted fact that the strike of the Bar Association was called off w.e.f. 17.08.2019. So, there was sufficient time with the appellant to avail the appropriate legal remedy within time.

5. It is settled principle of law that mere filing of the appeal does not amount to stay of the operation of the order passed by the Court below.

6. Needless to say, that the provision of proviso to Section 43(5) of the Act are mandatory in nature. The said provision read as under :-

“43. Establishment of Real Estate Appellate Tribunal-

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained without the promoter first having deposited with the Appellate Tribunal at least thirty per cent of the penalty or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.”

7. The aforesaid provision of law makes it clear that the deposit of whole of the amount payable to the allottee, which has been imposed

by the Ld Authority, is a condition precedent to entertain the appeal. In the instant cases the appellant/promoter has not complied with the mandatory provision of proviso to section 43(5) of the Act but inspite of availing sufficient time so, the present appeal filed by the appellant/promoter cannot be entertained and the same is hereby dismissed.

8. The amount, if any, deposited by the appellant/promoter with this Tribunal be transferred to the account of the Ld Real Estate Regulatory Authority, Gurugram.

9. File be consigned to record-room.

Pronounced on:
27.08.2019

Justice Darshan Singh(Retd)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
27.08.2019

Inderjeet Mehta
Member (Judicial)
27.08.2019

Anil Kumar Gupta
Member (Technical)
27.08.2019