

M/s Almond Infrabuild Pvt. Ltd. Vs. Sudesh Devi
Appeal No.439 of 2019

Present: Shri Harsh Bungler, Advocate, ld. Counsel for the appellant.

Vide our order dated 03.10.2019, the application moved by the appellant/promoter for waiver of the condition of pre-deposit was dismissed and the appellant/promoter was directed to deposit whole of the amount payable to the respondent/allottee, as imposed by the learned Authority vide impugned order, on or before 30.10.2019 with this Tribunal. As per the report of the office, no amount has been deposited by the appellant/promoter.

Learned counsel for the appellant/promoter has requested for extension of time on the ground that the appellant has already filed writ petition before the Hon'ble High Court in which the order dated 03.10.2019 passed by this Tribunal has been challenged and the same is yet to be listed.

We have duly considered the aforesaid contention.

It is settled principle of law that mere filing of appeal/writ petition will not amount to automatically staying the operation of the order passed by the court below. So, mere filing of the writ petition against the order passed by this Tribunal is no ground to further extend time for depositing the requisite amount to comply with the provisions of proviso to section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'). Moreover, in this case the appeal was filed on 13.06.2019. It was put up for the first time before this Tribunal on 30.08.2019. Thereafter the case remained pending for disposal of the application filed by the appellant for waiver of the condition of pre-deposit which was dismissed by this Tribunal on the last date of hearing i.e. 03.10.2019. Even on that date, the appellant was granted more than three weeks time to deposit the requisite amount. So, sufficient

time has already been granted to the appellant/promoter. There is no justification to further extend time.

It is settled principle of law that the provisions of proviso to section 43(5) of the Act are mandatory. It is a condition precedent for entertainment of the appeal filed by the promoter to deposit the requisite amount. In the instant case, the appellant/promoter has not complied with the mandatory provisions of proviso to section 43(5) of the Act inspite of sufficient opportunity. Consequently, the present appeal cannot be entertained and the same is hereby dismissed.

File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
31.10.2019

Inderjeet Mehta
Member (Judicial)
31.10.2019

Anil Kumar Gupta
Member (Technical)
31.10.2019