

M/s Cosmos Infra Engineering India Pvt. Ltd.  
Vs.  
Abhishek Agarwal & anr.  
Appeal No.350 of 2019

Present: Shri Anurag Chopra, Advocate, ld. Counsel for the appellant.

Vide our order dated 18.10.2019 an application moved by the appellant/promoter for waiver of the condition of pre-deposit was dismissed and the appellant/promoter was directed to comply with the provisions of proviso to section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), on or before 06.11.2019.

2. As per the report of the office no amount has been deposited by the appellant/promoter till date in compliance our aforesaid order and in order to comply with the provisions of proviso to section 43(5) of the Act.

3. The appellant/promoter has moved an application dated 06.11.2019 for clarification/modification in the order dated 18.10.2019 and further extension of the time for depositing the amount, if any, awarded in favour of the respondents/allottees vide impugned order dated 10.04.2019 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority').

4. It is pleaded by the appellant/promoter that it should be clarified as to whether the appellant is entitled to deduct the amount payable by the respondent/allottees to the appellant in terms of the directions issued by the learned Authority from the amount of compensation awarded to the respondents/allottees on account of delayed payment charges. Further it has been pleaded that the appellant may be afforded further reasonable time to deposit the

differential amount, if any, payable by the appellant/promoter to the respondents/allottees.

5. As per the averments in the application, vide impugned order, the appellant was directed to pay the delayed possession charges at the prescribed rate of interest i.e. 10.70% per annum w.e.f. 07.08.2016 till the offer of possession. The learned Authority has also directed the respondents/allottees to pay the outstanding dues, if any, to the appellant after adjustment of interest for the delayed period. The appellant was also directed that the interest on the due payment from the complainants shall be charged at the prescribed rate i.e. 10.70% by the promoter which is the same as has been granted to the respondents/allottees in case of delayed possession. Thus, in view of the directions issued vide the impugned order, the appellant has sought modification/clarification of the order dated 18.10.2019 passed by this Tribunal to the limited extent whether in view of the amount outstanding against the respondents/allottees, the appellant/promoter is either liable to pay the awarded amount without any deduction or is only required to pay the differential amount, if any, after deducting the amount payable by the respondents/allottees from the amount of compensation awarded by the learned Authority.

6. Regarding the stand taken by the appellant in the application seeking modification in the order dated 18.10.2019, it is suffice to say that it is for the appellant to ascertain the amount which the appellant is liable to pay the respondents/allottees as per the directions issued by the learned Authority vide impugned order dated 10.04.2019. Since, the same has not been done by the appellant nor any amount has been deposited which the appellant is liable to pay to the respondents/allottees, so the order dated 18.10.2019 handed down by this Tribunal has not been complied

with by the appellant. Thus, there appears to be no justification to further extend the time for depositing the amount and accordingly the present application stands dismissed.

7. 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.

8. File be consigned to records.

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh  
07.11.2019

Inderjeet Mehta  
Member (Judicial)  
07.11.2019

Anil Kumar Gupta  
Member (Technical)  
07.11.2019