

M/s Aerens Jai Reality Pvt. Ltd. Vs. Des Raj Mangla
Appeal No.1376 of 2019

Present: Sh. Sanjeeva Kumar, Advocate, counsel for the appellant.

On the last date of hearing the application moved by the appellant for waiver of the condition of pre-deposit was dismissed by this Tribunal and the appellant was directed to deposit the requisite amount i.e. whole of the amount payable to the respondent/allottee, as imposed by the learned Authority, on or before 16.12.2019. As per the report of the office, no amount has been deposited by the appellant till date in order to comply with the provisions of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') and as per the direction of this Tribunal dated 29.11.2019.

2. Learned counsel for the appellant has requested to extend the time for deposit of the money on the ground that the appellant is going to file appeal against the order passed by this Tribunal.

3. We have duly considered the aforesaid plea raised by learned counsel for the appellant.

4. The plea raised by the appellant is itself contradictory. On one hand request is being made for extension of time to deposit the amount and on the other hand it is stated that time is required to file the appeal. Even in the written request, it is mentioned that the appellant is going to file appeal/writ petition before the Hon'ble High Court. Thus, it is a fact that the amount as directed by this Tribunal has not been deposited so far. There is no sufficient cause for extension of the time. We cannot extend the time to deposit the amount in order to enabling the appellant to file appeal/writ petition against the order passed by this Tribunal.

5. Moreover, it is settled principle of law that mere filing of appeal/writ petition will not amount to staying the operation of the order passed by the Court below. So, there is no justification to further extend the time for deposit of the amount as directed vide order dated 29.11.2019 passed by this Tribunal.

6. There is no dispute with the proposition of law that provisions of proviso to section 43(5) of the Act are mandatory and deposit of the requisite amount is a condition precedent for entertainment of the appeal. Thus, as the appellant/promoter has not complied with the mandatory provisions of proviso to section 43(5) of the Act, the present appeal filed by the appellant/promoter cannot be entertained and consequently the same is hereby dismissed.

7. File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
17.12.2019

Inderjeet Mehta
Member (Judicial)
17.12.2019

Anil Kumar Gupta
Member (Technical)
17.12.2019