

Emaar MGF Land Ltd.
V/s
Meinka Khosla & another

Appeal No. 34 of 2019

Hearing through whatsapp video conferencing

Present: Ms. Rupali Shekhar Verma, Advocate, ld. counsel for the appellant.

Sh. Sandeep Khunger, Advocate, Ld. counsel for the respondents.

The appellant has moved an application for review of the orders dated 16.01.2020 & 03.02.2020 passed by this Tribunal with respect to the directions for filing the affidavits of the Managing Director of the appellant company to the effect that no appeal has been preferred by the appellant against the order dated 29.07.2019 passed by this Tribunal. Sh. Sandeep Khunger, Advocate ld. counsel for the respondents has stated that he has received the copy of the application and he does not want to file any reply to the application.

The appellant had earlier moved an application for preponment of the case, for withdrawal of the appeal and for refund of the statutory amount deposited by the appellant on the ground that the matter has been settled between the parties in pursuance of the settlement deed dated 03.09.2019.

But there was a confusion with respect to the fact as to whether the appellant has preferred any appeal against the order dated 29.07.2019 passed by this Tribunal or not. We have directed the appellant to file the affidavit of its Managing Director clarifying this issue as the case was adjourned on 29.10.2019 on the request of the ld. counsel for the appellant on the plea that the appeal filed before the Hon'ble High Court has been adjourned to 06.11.2019. But later on, ld. counsel for the appellant on 16.01.2020 had stated that no appeal has been preferred in this case against the order dated

29.07.2019 passed by this Tribunal. Vide order dated 16.01.2020, we have directed the appellant to file the affidavit of its Managing Director to clarify the fact that no appeal has been preferred by the appellant before the Hon'ble High Court against the order dated 29.07.2019. On 03.02.2020, the appellant/promoter has filed the affidavit of Sh. Rajnish Kaushik, its Authorised Signatory instead of its Managing Director. We have rejected that affidavit as it was not in consonance with our directions as given in the order dated 16.01.2020.

Now the appellant has moved this application for review of the order dated 16.01.2020 & 03.02.2020 on the grounds inter-alia that Sh. Rajnish Kaushik, is the representative of the appellant who has been authorised to sign the documents/affidavits on behalf of the appellant company. He may be allowed to file the affidavit on behalf of the appellant company. The order dated 03.02.2020, may be recalled and affidavit dated 03.02.2020 filed by him may be accepted.

Sh. Sandeep Khunger, Advocate Id. counsel for the respondents has stated that the respondents/allottees have also not received so far any notice of any appeal having been filed by the appellant/promoter against the order dated 29.07.2019 passed by this Tribunal. He has also stated that he has no objection in taking into consideration the affidavit filed by Sh. Rajnish Kaushik, the Authorised Representative of the appellant company.

In view of the reasons mentioned in the application supported by the affidavit, we recall the order dated 16.01.2020 to the extent of giving directions to file the affidavit of the Managing Director of the appellant company and the order dated 03.02.2020 rejecting the affidavit filed by Sh. Rajnish Kaushik, the Authorised Representative of the appellant company. So, the affidavit filed by him is hereby accepted.

In the affidavit dated 03.02.2020 filed by Sh. Rajnish Kaushik, the Authorised Representative of the appellant this fact has been categorically mentioned that the appellant has not filed any appeal against the order dated 29.07.2019 passed by this Tribunal. Ld. counsel for the respondents has also confirmed this fact and stated that the respondents have not received any notice in any appeal having been filed by the appellant/promoter against the order dated 29.07.2019 passed by this Tribunal. The office of this Tribunal has also made the report that no order/notice has been received from the Hon'ble High Court. Thus, it appears that due to some misunderstanding and confusion, ld. counsel for the appellant wrongly informed this Tribunal for having preferred the appeal against the order dated 29.07.2019. Now as per the stand of the appellant and not controverted by the respondents, in fact, no such appeal was preferred.

Ms. Rupali Shekhar Verma, Advocate ld. counsel for the appellant states at bar that the parties have compromised in terms of the settlement-deed dated 03.09.2019, Annexure A-1. So, the present appeal may be dismissed as withdrawn and the statutory amount deposited by the appellant in compliance of the provisions of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 may be released in favour of the appellant.

Sh. Sandeep Khunger, Advocate, ld. counsel for the respondents has also stated that he has no objection in allowing the appellant to withdraw the present appeal in pursuance of the settlement-deed dated 03.09.2019 and the refund of the statutory amount deposited by the appellant/promoter in its favour.

The settlement-deed dated 03.09.2019, Annexure A-1, shows that the parties have settled their dispute amicably. The appellant/promoter has sought the withdrawal of the present appeal

on the basis of settlement-deed dated 03.09.2019 and for refund of the amount. Thus, in view of the written application moved by the appellant and the statement made by the ld. counsel for the appellant at bar, the present appeal is hereby dismissed as withdrawn in pursuance of the settlement-deed dated 03.09.2019. The settlement-deed dated 03.09.2019 shall form the part of this order. The parties shall be bound by the terms and conditions settled therein.

The statutory amount of Rs. 10,27,323/- deposited by the appellant with this Tribunal to comply with the provisions of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 be refunded to the appellant as per rules.

File be consigned to the records.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

17.06.2020
Rajni