

M/s Orris Infrastructure Pvt. Ltd.

Vs.

Sajjan Kumar

Appeal No.34 of 2021

Present: Shri Shubham Bhardwaj, Advocate, for Shri Surjeet Bhadu, Advocate, ld. Counsel for the appellant.

[The aforesaid presence is being recorded through video conferencing]

The appellant has not deposited any amount with this Tribunal to comply with the mandatory provisions of proviso to section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'). The application moved by the appellant for waiver of the condition of pre-deposit was dismissed by this Tribunal vide order dated 30.03.2021 and the appellant was given time to deposit the requisite amount on or before 29.04.2021. As per the report of the office, the said amount has not been deposited till date.

2. After dismissal of the application for waiver of the condition of pre-deposit vide order dated 30.03.2021, the case was listed for 30.04.2021 to see the compliance of the aforesaid order. On that day, learned counsel for the appellant had taken the plea that in CWP-PIL-77-2021 titled as "Court on its own motion Vs. Union of India and others" the Hon'ble High Court of Punjab and Haryana vide order dated 28.04.2021 had extended the period to comply with the directions issued by the Hon'ble High Court or any other Court subordinate to it or any Family Court or Labour Court or any Tribunal or any other Judicial or Quasi-Judicial Forum, and prayed for adjournment of the case in view of the order passed by the Hon'ble High Court. So, the case was adjourned to 02.07.2021 and then 28.07.2021 and then for today.

3. In the meanwhile, this Tribunal moved CM-59-CWPIL-2021 in WP-PIL-77-2021 and the Hon'ble High Court was pleased to pass the order on the said Civil Miscellaneous on August 20, 2021 which reads as under: -

*“With regard to **CM-59-CWPIL-2021**, filed by the Registrar, Haryana Real Estate Appellate Tribunal, we are of the considered opinion that this application is a result of misinterpretation of the directions issued by this Court. In the interim order, we had not granted any kind of stay facilitating filing of appeals before the RERA or any other Tribunal/Authority without making pre-deposits. It is clarified that there is no stay with regard to making pre-deposits or requiring compliance thereof, while filing appeals before any Tribunal/Authority/Court, which is mandated by any statute, and the Tribunals/Authorities/Courts are at liberty to enforce such pre-deposit conditions.”*

4. In the aforesaid order, the Hon'ble High Court has made the position clear that there is no stay with regard to making pre-deposits or requiring compliance thereof, while filing appeals before any Tribunal/Authority/Court, which is mandated by any statute, and the Tribunals/Authorities/Courts are at liberty to enforce such pre-deposit conditions.

5. As already mentioned, the appellant has not deposited the requisite amount of pre-deposit even till date inspite of availing a period of more than five months. Learned counsel for the appellant has pleaded for more time to comply with the provisions of proviso to Section 43(5) of the Act, but in our view the appellant has already availed sufficient time to comply with the aforesaid provisions and there is no ground for granting any further time for this purpose. So, the request made by learned counsel for the appellant is declined.

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6. 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.

7. Copy of this order be sent to all the concerned.

8. File be consigned to the record.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

September 03, 2021
CL