

Emaar India Limited Vs.Nitin Kumar & Anr.

C.M.No.262 of 2021

In

Appeal No.47 of 2021

Present: Shri Kunal Dawar, Advocate, Id. Counsel for the applicant/appellant.

[Through VC]

ORDER

Applicant-appellant has filed this application for staying the disbursement of the amount deposited by the applicant-appellant, till the expiration of limitation for filing of statutory appeal as provided under Section 58 the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act').

2. As per averments in the application, the appeal filed by the applicant-appellant was dismissed by this Tribunal on 14.10.2021. While dismissing the appeal, this Tribunal directed the learned Haryana Real Estate Regulatory Authority, Gurugram(hereinafter called 'the learned Authority') to disburse the amount deposited by the appellant to comply with the provisions of proviso to Section 43(5) of the Act. It is further pleaded that the applicant-appellant intends to file appeal against the order of this Tribunal within the statutory period of 60 days as provided under Section 58 of the Act. Thus, the

disbursement of the pre-deposited amount may be stayed till the expiration of the limitation to file the statutory appeal i.e. for 60 days.

3. Hence this application.

4. We have heard Shri Kunal Dawar, Advocate, learned counsel for the applicant-appellant and have carefully gone through the record of the case.

5. The appeal filed by the applicant-appellant against the order passed by the learned Authority was dismissed by this Tribunal vide order dated 14.10.2021. While dismissing the appeal, this Tribunal has ordered that the amount deposited by the appellant with this Tribunal to comply with the provisions of proviso to Section 43(5) of the Act be remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram for disbursement to the respondents-allottees in accordance with law. Now, this application has been moved by the applicant-appellant for staying the disbursement of the amount till the expiration of the period of limitation to file the statutory appeal as the appellant intends to file the appeal against the order dated 14.10.2021 passed by this Tribunal.

6. Learned counsel for the applicant-appellant contended that the appellant has a statutory right to file appeal against the order dated 14.10.2021 passed by this

Tribunal as per Section 58 of the Act, within a period of 60 days. He contended that the limitation has not yet expired, so, the disbursement of the pre-deposited amount may be stayed till the expiration of the period to file the appeal.

7. We have duly considered the aforesaid contentions.

8. By moving this application, the applicant-appellant is virtually seeking stay of the order dated 14.10.2021 passed by this Tribunal. There is no dispute that the Court which passed the decree is competent to order the execution to be stayed under certain circumstances. The relevant provision in the Code of Civil Procedure, 1908 dealing with this subject is Order 41 Rule 5 sub-rule 2 and 3, which reads as under: -

“5. Stay by Appellate Court –

(1) x x x x

(2) *Stay by Court which passed the decree –*
Where an application is made for stay for execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) *No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied –*

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;*
- (b) that the application has been made without reasonable delay; and*
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.”*

9. Order 41 Rule 5 sub-rule 3 Clause (a) categorically provides that no stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court is satisfied that substantial loss may result to the party applying for stay of execution unless the order is made. In the present application, the applicant-appellant has nowhere pleaded that the applicant will suffer any substantial loss, if the disbursement of the pre-deposited amount as directed in the order dated 14.10.2021, is not stayed. Mere this fact that the applicant-appellant intends to file appeal against the order passed by this Tribunal, is no ground to stay the order dated 14.10.2021 passed by this Tribunal.

10. The respondents-allottees filed the complaint in December, 2019 and the learned Authority has decided the complaint filed by the respondents-allottees on 14.02.2020. So, the respondents-allottees are pursuing the remedy for the last about two years, but, they have not been able to bear the fruits of the litigation. If the

disbursement of the amount is stayed, it will cause prejudice to the rights of the respondents-allottees.

11. Thus, in view of our aforesaid discussion, the present application has no merits and the same is hereby dismissed.

12. The papers of the Civil Miscellaneous Application along with this order be attached with the appeal file.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

November 26, 2021
CL