Apex Buildwell Pvt. Ltd.
Vs.
B.K. Bhalla
Appeal No.164 of 2020

Present: Shri Alok Mittal, Advocate, Ld. counsel for the appellant.

Ld. counsel for appellant has very fairly conceded that the SLPs filed by the appellant has been dismissed by the Hon'ble Apex Court.

2. He has pleaded that an opportunity should be given to the appellant to make the pre deposit to comply with the provisions of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short, the Act).

3. He has contended that para no. 142 of the judgment titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc. 2022 (1) RCR (Civil) 357 was applicable only to the appeals which were to be filed against the order of the authority. He contended herein this case, the appeal filed by the appellant is already pending before this Tribunal. So, para no. 142 of the said judgment shall not be applicable and appellant deserve reasonable time to make pre-deposit.

4. We have duly considered the aforesaid contentions raised by the ld. counsel for the appellant.

5. The SLP's in Haryana matters have been disposed of/dismissed by the Hon'ble Apex Court vide orders dated May 11, 2022, May 12, 2022, & May 13, 2022. However, the relief granted in terms of paragaraph 142 in M/s Newtech Promoters and Developers Pvt. Ltd. (supra) was made applicable. Para No. 142 in the said judgments reads as under:

> *142. The upshot of the discussion is that we find no error in the judgment impugned in the instant appeals. Consequently, the batch of appeals are disposed off in the above terms. However, we make it clear that if any of the appellant intends to prefer appeal before the Appellate Tribunal against the order of the Authority it may be open for him to challenge within 30 days from today provided the appellant(s) comply with the condition of pre-deposit as contemplated under the proviso to section 43(5) of the Act which may be decided by the Tribunal on its own merits in accordance with law. No costs.*

6. No doubt in the aforesaid para, the Hon'ble Apex Court has mentioned that if the appellant intends to prefer appeal before the Appellate Tribunal against the order of the authority. It may be upon for him to challenge within 30 days from today provided the appellant comply with the condition of pre deposit as contemplated under the proviso to Section 43(5) of the Act. The Hon'ble Apex Court has given 30 days' time to prefer the appeal against the order of the authority before the Appellate Tribunal with the condition to comply with the proviso to Section 43(5) of the Act. In our opinion, the same principle will apply to the appeals already pending before the Appellate Tribunal where the appellant has not so far complied with the provisions of proviso to Section 43(5) of the Act.

7. In this case, at the time of filing of the appeal the appellant has not deposited any money to comply with the provisions of proviso to Section 43(5) of the Act. The application moved by the appellant for waiver of the condition of the pre deposit was dismissed vide detailed order dated 24.08.2020. The appellant promoter was granted time to deposit the requisite amount with this Tribunal on or before 21.09.2020. In the meanwhile, the appellant has preferred Civil Writ Petition before the Hon'ble High Court against the

aforesaid order passed by this Tribunal. It is an admitted fact that the said writ petition has been dismissed by the Hon'ble High Court vide order/judgment dated 16.10.2020. The appellant promoter was directed to make the pre deposit not later than 16.11.2020. Instead of complying with aforesaid directions of the Hon'ble High Court, the appellant preferred Special Leave to Appeal before the Hon'ble Apex Court. Now it is an admitted fact that even the said SLP has been dismissed by the Hon'ble Apex Court. The period of 30 days from the date of dismissal of the SLP has already expired. Even then, the appellant has not deposited a single penny with this Tribunal to comply with the provisions of proviso to Section 43(5) of the Act.

8. The conduct of the appellant does not make it entitled for any further concession. This appeal was filed with this Tribunal on 13.03.2020 and was put up before this Tribunal on July 1, 2020 i.e. after more than three months. But, even during this period, the appellant has not deposited any amount to comply with the mandatory provisions of proviso to Section 43(5) of the Act. Rather, an application for wavier of the condition of pre deposit was moved which was dismissed by this Tribunal on August 24, 2020. No doubt, the said order remained under challenge before the Hon'ble High Court and then before the Hon'ble Apex Court. But, the litigation before the Hon'ble Higher Courts came into an end on May 11, 2022, May 12, 2022, & May 13, 2022. The period of more than 50 days has expired since then. The appellant was very well aware that in view of the dismissal of the SLP by the Hon'ble Apex Court, the only option available with the appellant was to comply with the provisions of proviso to Section 43(5) of the Act by making the pre-deposit. But, during span of more than 50 days, no efforts were made by the appellant to make the pre deposit.

9. The request made by ld. counsel for the appellant today before this Tribunal to grant more time to make the pre deposit is nothing but an efforts to further prolong the matter. Thus, the appellant is not entitled for any further time to make the pre-deposit, as the appellant had already availed adequate and sufficient time. Thus, the appellant has failed to comply with the mandatory provisions of proviso to Section 43(5) of the Act.

10. It is settled principle of law that the compliance of proviso to Section 43(5) of the Act is a condition precedent for entertainment of the appeal. But, in the instant case the appellant-promoter has not complied with the said proviso inspite of sufficient opportunities. So, the present appeal cannot be entertained and the same is hereby dismissed.

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

12. 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)

06.07.2022
rajni