Saera Auto India Pvt. Ltd.
V/s
Vikram Lamba and Preeti Lamba & Ors.
Appeal No. 37 of 2020

Present: Shri Pranav Proothi, Advocate, Ld. counsel for the appellant.

ORDER

Learned counsel for the appellant has submitted that the appellant has settled the matter with the respondent/respondents in the execution petitions preferred by the respondent/respondents, but the appellant intends to continue with the present appeal as the learned Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority'), has illegally held the appellant to be the promoter of the project.

2. It is pertinent to mention that the appellant-promoter so far has not deposited any amount with this Tribunal to comply with the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'). Rather, the counsel for the appellant has submitted that as the matter has been compromised with the respondent/respondents and the due amount has been paid to the respondent/respondents, so the appellant may be exempted to comply with the proviso to Section 43(5) of the Act.

3. However, the alleged compromise has not been placed on the file.

4. We have heard Pranav Proothi, Advocate, learned counsel for the appellant and have carefully gone through the record of the case.

5. As is explicit from the perusal of the order dated 06.02.2020 of this Tribunal, the appellant had preferred a Civil Writ Petition No.2345 of 2020 seeking direction to this Tribunal to entertain the appeal without requiring the appellant to deposit the amount as required under Section 43(5) of the Act. At that time in the said writ petition, the Hon'ble High Court was pleased to direct this Tribunal to keep the proceedings in abeyance in pursuance to the impugned order.

6. The said writ petition No.2345 of 2020 along with other writ petitions was disposed of by the Hon'ble High Court vide judgment dated 16.10.2020 titled 'Experion Developers Pvt. Ltd. Vs. State of Haryana and others' and the challenge to the constitutional validity of the proviso to Section 43(5) of the Act of the Act was rejected. Aggrieved by the same, the appellant preferred SLP No.14625 -14626 of 2020 before the Hon'ble Supreme Court of India and the said SLP preferred by the appellant as well as other SLPs preferred by other aggrieved persons were dismissed by the Hon'ble Supreme Court vide

judgment dated 13.05.2022 titled as ***"M/s SANA REALTORS PVT. LTD. VERSUS UNION OF INDIA & ORS.***" with the following observations:-

> *"We do not see any reason to interfere in these matters. However, the relief that was granted in terms of paragraph 142 of the decision in M/s Newtech Promoters & Developers Pvt. Ltd. V. State of UP & Others, reported in 2021(13) SCALE 466, in rest of the matters [i.e. SLP(C) No.13005 of 2020 Etc.) disposed of on 12.05.2022 shall be available to the petitioners in the instant matters.*
>
> *With these observations, the Special Leave Petitions are dismissed."*

7. Paragraph no.142 of the decision in ***Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357*** is as follows:-

> *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."*

8. The above referred period of 30 days in the aforesaid paragraph expired on 12th of June, 2022. Admittedly, till date, the appellant has not deposited the requisite amount to comply with the proviso to Section 43(5) of the Act, which in fact the appellant was required to do up to 12th of June, 2022.

9. It is settled principle of law that the compliance of the proviso to Section 43(5) of the Act is 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 aforesaid plea raised by the appellant regarding the merit of the appeal cannot be entertained without the compliance of Section 43(5) of the Act and the same is hereby declined. Resultantly, the present appeal cannot be entertained and the same is hereby dismissed.

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

11. File be consigned to the record.

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal,
Chandigarh

Anil Kumar Gupta
Member (Technical)

August 01, 2022
CL